

# **ATTACHMENT 58**

1           IN THE UNITED STATES DISTRICT COURT  
2           FOR THE EASTERN DISTRICT OF PENNSYLVANIA

3       IN RE:    PROCESSED EGG PRODUCTS :  
4       ANTITRUST LITIGATION               :  
5       -----:   MDL No. 2002  
6       THIS DOCUMENT APPLIES TO:         :   08-MD-02002  
7       ALL DIRECT PURCHASER ACTIONS     :

8                       \*\* HIGHLY CONFIDENTIAL \*\*

9                       Friday, March 7, 2014

10  
11                      Videotaped deposition of MARCUS  
12       RUST, taken at the offices of Porter, Wright,  
13       Morris & Arthur LLP, 1900 K Street, NW, Suite  
14       1100, Washington, D.C. 20006, beginning at  
15       7:32 a.m., before LINDA ROSSI RIOS, a  
16       Federally Approved RPR, CCR and Notary  
17       Public.

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 SUSMAN GODFREY LLP</p> <p>4 BY: MATTHEW B. ALLEN, ESQUIRE</p> <p>5 Suite 5100</p> <p>6 1000 Louisiana Street</p> <p>7 Houston, TX 77002</p> <p>8 713-653-7803</p> <p>9 mallen@susmangodfrey.com</p> <p>10 On behalf of the Direct Purchaser</p> <p>11 Plaintiffs</p> <p>12</p> <p>13 STRAUS &amp; BOIES, LLP</p> <p>14 BY: MARK J. SCHIRMER, ESQUIRE</p> <p>15 and</p> <p>16 SCOTT M. DINNER, ESQUIRE</p> <p>17 4141 University Avenue</p> <p>18 Fairfax, VA 22030</p> <p>19 203-764-8700</p> <p>20 mschirmer@strauss-boies.com</p> <p>21 sdinner@strauss-boies.com</p> <p>22 On behalf of the Indirect Purchaser</p> <p>23 Plaintiffs</p> <p>24</p> <p>25 JENNER &amp; BLOCK, LLP</p> <p>26 BY: JAMES T. MALYSIAK, ESQUIRE</p> <p>27 353 North Clark Street</p> <p>28 Chicago, IL 60654</p> <p>29 312-840-7282</p> <p>30 jmalysiak@jenner.com</p> <p>31 On behalf of the Direct Action Plaintiffs</p> <p>32 and Kraft, Kellogg, Nestle and General</p> <p>33 Mills</p> <p>34</p> <p>35</p>	<p style="text-align: right;">Page 4</p> <p>1 EIMER STAHL, LLP</p> <p>2 BY: VANESSA G. JACOBSEN, ESQUIRE</p> <p>3 224 South Michigan Avenue, Suite 1300</p> <p>4 Chicago, IL 60604</p> <p>5 312-660-7604</p> <p>6 vjacobsen@eimerstahl.com</p> <p>7 On behalf of Moark LLC</p> <p>8 and Norco Ranch, Inc.</p> <p>9 (Via teleconference)</p> <p>10</p> <p>11 FAEGRE BAKER DANIELS</p> <p>12 BY: E. JASON BURKE, ESQUIRE</p> <p>13 311 S. Wacker Drive</p> <p>14 Suite 4400</p> <p>15 Chicago, IL 60606</p> <p>16 317-212-2264</p> <p>17 jason.burke@faegrebd.com</p> <p>18 On behalf of Midwest Poultry Services</p> <p>19 (Via teleconference)</p> <p>20</p> <p>21 ALSO PRESENT:</p> <p>22</p> <p>23 JOSEPH A. MILLER, ESQUIRE</p> <p>24 Rose Acre Farms General Counsel</p> <p>25 P.O. Box 1250</p> <p>26 Seymour, IN 47274</p> <p>27 jtmiller@goodegg.com</p> <p>28 812-497-2557</p> <p>29</p> <p>30 KIM JOHNSON, Videographer</p> <p>31</p> <p>32</p> <p>33</p> <p>34</p> <p>35</p>
<p style="text-align: right;">Page 3</p> <p>1 WEIL, GOTSHAL &amp; MANGES LLP</p> <p>2 BY: CARRIE M. ANDERSON, ESQUIRE</p> <p>3 1300 Eye Street, N.W.</p> <p>4 Suite 900</p> <p>5 Washington, D.C. 20005</p> <p>6 202-682-7231</p> <p>7 carrie.anderson@weil.com</p> <p>8 On behalf of Defendant, Michael Foods</p> <p>9 and Papetti's Hygrade Egg Products</p> <p>10</p> <p>11 PORTER, WRIGHT, MORRIS &amp; ARTHUR LLP</p> <p>12 BY: DONALD M. BARNES, ESQUIRE</p> <p>13 and</p> <p>14 JOHN C. MONICA, JR.</p> <p>15 1919 Pennsylvania Avenue, NW</p> <p>16 Suite 500</p> <p>17 Washington, D.C. 20006</p> <p>18 202-778-3056</p> <p>19 202-778-3050</p> <p>20 dbarnes@porterwright.com</p> <p>21 jmonica@porterwright.com</p> <p>22 On behalf of Defendant, Rose Acre Farms</p> <p>23</p> <p>24</p> <p>25 PEPPER HAMILTON LLP</p> <p>26 BY: EVAN W. DAVIS, ESQUIRE</p> <p>27 JAN P. LEVINE, ESQUIRE</p> <p>28 and</p> <p>29 WHITNEY REDDING, ESQUIRE</p> <p>30 3000 Two Logan square</p> <p>31 18th and Arch Streets</p> <p>32 Philadelphia, Pennsylvania 19103</p> <p>33 215-981-4245</p> <p>34 215-981-4714</p> <p>35 215-981-4121</p> <p>36 davisew@pepperlaw.com</p> <p>37 levinej@pepperlaw.com</p> <p>38 reddingw@pepperlaw.com</p> <p>39 On behalf of United Egg Producers and</p> <p>40 United States Egg Marketers</p> <p>41 (Via teleconference)</p> <p>42</p> <p>43</p> <p>44</p> <p>45</p>	<p style="text-align: right;">Page 5</p> <p>1 INDEX</p> <p>2 - - -</p> <p>3 Testimony of: MARCUS RUST</p> <p>4 By Mr. Allen 14</p> <p>5 By Mr. Schirmer 198</p> <p>6 By Mr. Malysiak 333, 372</p> <p>7 By Mr. Barnes 357</p> <p>8 - - -</p> <p>9 EXHIBITS</p> <p>10 - - -</p> <p>11 EXHIBIT NUMBER DESCRIPTION PAGE MARKED</p> <p>12</p> <p>13 Exhibit 1 10/7/02 United Voices</p> <p>14 newsletter,</p> <p>15 CM00429325 - CM00429334 39</p> <p>16</p> <p>17 Exhibit 2 United Voices newsletter,</p> <p>18 UE0875297 - UE0875304 55</p> <p>19 Exhibit 3 4/04 UEP's United Voices</p> <p>20 newsletter,</p> <p>21 UE0754321 - UE0754330 64</p> <p>22 Exhibit 4 6/2/04 UEP United Voices</p> <p>23 newsletter,</p> <p>24 UE0131851 - UE0131854 69</p> <p>25 Exhibit 5 May 11-12, 2004 UEP</p> <p>Board of Directors</p> <p>Meeting Minutes,</p> <p>UE0153273 - UE0153276 73</p> <p>26</p> <p>27 Exhibit 6 10/04 United Voices</p> <p>28 newsletter,</p> <p>29 RA0000363 - RA0000372 76</p> <p>30</p> <p>31</p> <p>32</p> <p>33</p> <p>34</p> <p>35</p>

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<p>1 DEPOSITION SUPPORT INDEX</p> <p>2</p> <p>3 DIRECTION TO WITNESS NOT TO ANSWER</p> <p>4 Page Line Page Line</p> <p>5 (None)</p> <p>6</p> <p>7</p> <p>8</p> <p>9 REQUEST FOR PRODUCTION OF DOCUMENTS</p> <p>10 Page Line</p> <p>11 (None)</p> <p>12</p> <p>13</p> <p>14 STIPULATIONS</p> <p>15 Page Line</p> <p>16 11 3</p> <p>17 14 9</p> <p>18 375 19</p> <p>19</p> <p>20 QUESTIONS MARKED</p> <p>21 Page Line</p> <p>22 (None)</p> <p>23</p> <p>24</p> <p>25</p>	<p>1</p> <p>2 Rust.</p> <p>3 At this time the attorneys</p> <p>4 present in the room and attending</p> <p>5 remotely will identify themselves and</p> <p>6 the parties they represent.</p> <p>7 MR. BARNES: We'll have noticing</p> <p>8 counsel first.</p> <p>9 MR. ALLEN: Matt Allen of Susman</p> <p>10 Godfrey on behalf of the direct</p> <p>11 purchaser class.</p> <p>12 MR. SCHIRMER: Mark Schirmer,</p> <p>13 Straus &amp; Boies on behalf of the</p> <p>14 indirect purchaser class.</p> <p>15 MR. MALYSIAK: James Malysiak,</p> <p>16 Jenner &amp; Block for the direct action</p> <p>17 plaintiffs.</p> <p>18 MR. DINNER: Scott Dinner,</p> <p>19 Straus &amp; Boies, for the indirect</p> <p>20 purchasers.</p> <p>21 MR. MILLER: Joe Miller, general</p> <p>22 counsel Rose Acre Farms.</p> <p>23 MR. MONICA: John Monica from</p> <p>24 Porter Wright representing Rose Acre</p> <p>25 Farms.</p>
Page 11	Page 13
<p>1</p> <p>2 - - -</p> <p>3 (It is hereby stipulated and</p> <p>4 agreed by and among counsel for the</p> <p>5 respective parties that reading,</p> <p>6 signing, sealing, certification and</p> <p>7 filing are waived and that all</p> <p>8 objections, except as to the form of</p> <p>9 the question, be reserved until the</p> <p>10 time of trial.)</p> <p>11 - - -</p> <p>12 VIDEOGRAPHER: We are now on the</p> <p>13 record. My name is Kim Johnson</p> <p>14 representing Veritext. The date today</p> <p>15 is March 7, 2014. The time is 7:32.</p> <p>16 This deposition is being held at</p> <p>17 Porter Wright, located at 1900 K</p> <p>18 Street, Northwest, Washington, D.C.,</p> <p>19 and is being taken by counsel for the</p> <p>20 plaintiff in the matter of Processed</p> <p>21 Egg Products Antitrust Litigation.</p> <p>22 This case is filed in the U.S.</p> <p>23 District Court of Eastern</p> <p>24 Pennsylvania, Case Number 08-MD-02002.</p> <p>25 The name of the witness is Marcus</p>	<p>1</p> <p>2 MR. BARNES: Don Barnes from</p> <p>3 Porter Wright also representing Rose</p> <p>4 Acre Farms.</p> <p>5 MR. ALLEN: Good morning, Mr.</p> <p>6 Rust.</p> <p>7 VIDEOGRAPHER: Excuse me.</p> <p>8 MR. ALLEN: I'm sorry.</p> <p>9 VIDEOGRAPHER: What about people</p> <p>10 on the phone?</p> <p>11 MR. MONICA: People on the</p> <p>12 phone, please, identify yourselves.</p> <p>13 MR. DAVIS: I am Evan Davis from</p> <p>14 Pepper Hamilton on behalf of United</p> <p>15 Egg Producers and United States Egg</p> <p>16 Marketers.</p> <p>17 MR. BURKE: Jason Burke of</p> <p>18 Faegre Baker Daniels on behalf of</p> <p>19 Midwest Poultry Services.</p> <p>20 VIDEOGRAPHER: Our court</p> <p>21 reporter, Linda Rossi representing</p> <p>22 Veritext, will swear in the witness</p> <p>23 and we can proceed.</p> <p>24 - - -</p> <p>25 MARCUS RUST, after having been</p>

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<p style="text-align: right;">Page 14</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     duly sworn, was examined and testified</p> <p>3     as follows:</p> <p>4     - - -</p> <p>5             EXAMINATION</p> <p>6     - - -</p> <p>7 BY MR. ALLEN:</p> <p>8     Q.    Good morning, Mr. Rust.</p> <p>9             MR. BARNES: Excuse me, before</p> <p>10    we begin, could we have a standard</p> <p>11    stipulation, all objections except as</p> <p>12    to form are preserved?</p> <p>13             MR. ALLEN: Yes.</p> <p>14             MR. BARNES: And an objection</p> <p>15    for one defendant is an objection for</p> <p>16    all?</p> <p>17             MR. ALLEN: Yes.</p> <p>18             MR. BARNES: Thank you.</p> <p>19             MR. SCHIRMER: Thank you. Save</p> <p>20    us time for getting out of here.</p> <p>21 BY MR. ALLEN:</p> <p>22    Q.    Good morning, Mr. Rust.</p> <p>23    A.    Good morning.</p> <p>24    Q.    Please state your name and</p> <p>25    current position.</p>	<p style="text-align: right;">Page 16</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     A.    Our attorneys.</p> <p>3     Q.    How long have you been an</p> <p>4    employee of Rose Acre Farms?</p> <p>5     A.    Since I was born.</p> <p>6     Q.    I'm sorry?</p> <p>7     A.    Since I was born, I was born</p> <p>8    into the business.</p> <p>9     Q.    How many years have you been</p> <p>10   actually working for the company?</p> <p>11    A.    Probably effective 30 or 40.</p> <p>12    Q.    30 or 40 years?</p> <p>13    A.    40 years plus.</p> <p>14    Q.    How long have you held your</p> <p>15   current position of CEO?</p> <p>16    A.    About two and a half years.</p> <p>17    Q.    Two and a half years?</p> <p>18    A.    Yes.</p> <p>19    Q.    Which positions did you hold at</p> <p>20   Rose Acre between 2000 and 2008?</p> <p>21    A.    I was kind of -- it's a family</p> <p>22   farm, and I was kind of -- I had a title, but</p> <p>23   I was still kind of the traffic cop.</p> <p>24    Q.    What was your title in 2000?</p> <p>25    A.    I was I think a vice president.</p>
<p style="text-align: right;">Page 15</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     A.    Marcus Rust, CEO, Rose Acre</p> <p>3   Farms.</p> <p>4     Q.    Do you understand that you're</p> <p>5   testifying today as a representative of Rose</p> <p>6   Acre and in your individual capacity?</p> <p>7     A.    Yes.</p> <p>8     Q.    Did you prepare for this</p> <p>9   deposition?</p> <p>10    A.    Yes.</p> <p>11    Q.    How many days did you prepare?</p> <p>12    A.    Three, four, something like</p> <p>13   that.</p> <p>14    Q.    Three or four?</p> <p>15    A.    Yes.</p> <p>16    Q.    Did you prepare here in</p> <p>17   Washington, D.C.?</p> <p>18    A.    Some here. Some in Ohio. Some</p> <p>19   in Indiana.</p> <p>20    Q.    Some here in Ohio and Indiana?</p> <p>21    A.    Yes.</p> <p>22    Q.    Did you review any documents as</p> <p>23   part of your preparation?</p> <p>24    A.    Yes.</p> <p>25    Q.    Who provided those documents?</p>	<p style="text-align: right;">Page 17</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     Q.    Vice president?</p> <p>3     A.    Yes.</p> <p>4     Q.    And in 2001?</p> <p>5     A.    The same.</p> <p>6     Q.    The same?</p> <p>7     A.    Yeah.</p> <p>8     Q.    Were you a vice president from</p> <p>9   2000 all the way to 2008?</p> <p>10    A.    Since the early '70s.</p> <p>11    Q.    Early '70s. And you actually</p> <p>12   became the CEO in 2012?</p> <p>13    A.    2011.</p> <p>14    Q.    2011, okay.</p> <p>15    A.    November.</p> <p>16    Q.    So you've been in the egg</p> <p>17   business for over 40 years. Is that fair?</p> <p>18    A.    It's the only thing I've been</p> <p>19   in.</p> <p>20    Q.    Do you agree that the demand</p> <p>21   for eggs is inelastic?</p> <p>22             MR. BARNES: Object to the form.</p> <p>23             He's neither an economist nor a</p> <p>24             lawyer. If he knows, he can answer.</p> <p>25             THE WITNESS: You have to</p>

5 (Pages 14 - 17)

<p style="text-align: right;">Page 18</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     explain inelastic to me.</p> <p>3     BY MR. ALLEN:</p> <p>4     Q.    Sure. So do you agree that the</p> <p>5     demand for eggs remains roughly the same when</p> <p>6     the price for eggs increases?</p> <p>7     A.    The demand for eggs is</p> <p>8     dependant on times of the year. It's very</p> <p>9     seasonal. It depends on if you have fad</p> <p>10    diets. It depends on promotions by stores.</p> <p>11   It depends on -- it's very erratic, it goes</p> <p>12   up and down like a yo-yo.</p> <p>13       MR. BARNES: Excuse me, did you</p> <p>14   say fad or bad diet?</p> <p>15       THE WITNESS: Fad.</p> <p>16       MR. BARNES: Thank you.</p> <p>17       THE WITNESS: Fad diets like the</p> <p>18   Atkinson thing. There's just lots</p> <p>19   of -- the egg market is -- it's heat</p> <p>20   can affect it. You know, it's a</p> <p>21   roller coaster.</p> <p>22   BY MR. ALLEN:</p> <p>23   Q.    But does the price of eggs</p> <p>24   affect demand in your experience?</p> <p>25   A.    Sometimes some of the greatest</p>	<p style="text-align: right;">Page 20</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     eggs does not affect the price?</p> <p>3     A.    The supply affects it, demand</p> <p>4     affects it. Demand is the big key.</p> <p>5     Q.    When did Rose Acre join the</p> <p>6     United Egg Producers?</p> <p>7     A.    In 2002.</p> <p>8     Q.    If it's okay with you, I'm</p> <p>9     going to refer to the United Egg Producers as</p> <p>10   the UEP. Is that okay?</p> <p>11   A.    That's fine.</p> <p>12   Q.    Why did Rose Acre join the UEP?</p> <p>13   A.    Several factors. Main factor</p> <p>14   was the demand by our customers that we had</p> <p>15   to be in this Animal Care Certified Program.</p> <p>16   And when they demanded that, we then elected</p> <p>17   to get into it. We looked at the -- our</p> <p>18   family, we've had deep divisions with UEP in</p> <p>19   the past. UEP started multiple -- members of</p> <p>20   UEP started multiple lawsuits against us back</p> <p>21   in years prior. And because of that, our</p> <p>22   family has always been deeply suspicious of</p> <p>23   the actions at UEP.</p> <p>24   Q.    How would you describe the</p> <p>25   purpose of the UEP?</p>
<p style="text-align: right;">Page 19</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     demand periods are some of the highest priced</p> <p>3     times.</p> <p>4     Q.    Do you agree that the supply of</p> <p>5     eggs is a factor in the price of eggs?</p> <p>6     A.    Supply would always be a</p> <p>7     factor, but demand is the biggest thing.</p> <p>8     Q.    Is it fair to say that</p> <p>9     sometimes when the supply goes up, the price</p> <p>10   goes down?</p> <p>11   A.    The supply of eggs really never</p> <p>12   changes that much in the scope of the</p> <p>13   business. You know, we -- if you look --</p> <p>14   study the statistics, you'll see the -- take</p> <p>15   like a 12-month rolling average of the number</p> <p>16   of hens that are in the country. USDA</p> <p>17   publishes all kinds of numbers. If you bear</p> <p>18   those out, you'll see that the volume of hens</p> <p>19   doesn't changes that much.</p> <p>20   Q.    But when the supply goes way</p> <p>21   up, does that sometimes make the price go</p> <p>22   down?</p> <p>23   A.    It's more on the demand.</p> <p>24   Demand is the key.</p> <p>25   Q.    So you're saying the supply of</p>	<p style="text-align: right;">Page 21</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     A.    It's been an organization</p> <p>3     that's been around since early '70s. It's</p> <p>4     always been a -- kind of a voice for the egg</p> <p>5     farmers in the United States. It's been what</p> <p>6     they call a Capper-Volstead co-op. They</p> <p>7     represent farmers. And, you know, it was</p> <p>8     always a good organization when you had views</p> <p>9     that needed representing from what we knew</p> <p>10   about it prior to getting in.</p> <p>11   Q.    Do you remember who the other</p> <p>12   members of the UEP were when Rose Acre joined</p> <p>13   in 2002?</p> <p>14   A.    I would say a good majority of</p> <p>15   the other egg producers. There is lots of</p> <p>16   people that were into it before we ever were.</p> <p>17   Q.    Were these other egg producers</p> <p>18   your competitors?</p> <p>19   A.    Yes.</p> <p>20   Q.    Mr. Rust, you served on the</p> <p>21   board of directors for the UEP. Is that</p> <p>22   correct?</p> <p>23   A.    Yes, there is about 30 or 40 of</p> <p>24   us, something like that.</p> <p>25   Q.    Which years did you serve on</p>

6 (Pages 18 - 21)

<p style="text-align: right;">Page 22</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2 the UEP board?</p> <p>3     A.    You'd have to go back and look</p> <p>4 at the records. I think probably all since</p> <p>5 we've been there.</p> <p>6     Q.    I've handed to you what has</p> <p>7 been marked as Exhibit 21 which is a document</p> <p>8 titled, "UNITED EGG PRODUCERS BOARD MEMBERS &amp;</p> <p>9 COMMITTEE CHAIRMEN 2003 DIRECTORY."</p> <p>10     MR. BARNES: Counsel, do you</p> <p>11 have -- thank you, Mark. I was just</p> <p>12 going to ask if you had copies for</p> <p>13 other counsel?</p> <p>14     MR. ALLEN: That's for the</p> <p>15 witness.</p> <p>16     MR. BARNES: Is this for me?</p> <p>17     MR. ALLEN: I'm sorry, that's</p> <p>18 for the witness.</p> <p>19     MR. BARNES: I'm sorry.</p> <p>20     MR. ALLEN: I'm handing -- I</p> <p>21 can't reach it.</p> <p>22     MR. BARNES: Okay. That's fine.</p> <p>23     MR. ALLEN: One for you.</p> <p>24     MR. BARNES: Now we've got it</p> <p>25 down. Now we've got it down.</p>	<p style="text-align: right;">Page 24</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2 automatically they give a board seat to that</p> <p>3 you have to -- when I say they give it, they</p> <p>4 put you on a ballot and then other producers</p> <p>5 vote on it.</p> <p>6     Q.    The other producers are members</p> <p>7 of the UEP, I assume?</p> <p>8     A.    Yes.</p> <p>9     Q.    How long is the board term?</p> <p>10    A.    Just a year.</p> <p>11    Q.    What are your responsibilities</p> <p>12 as a member of the UEP board of directors?</p> <p>13    A.    To vote and voice opinions on</p> <p>14 issues.</p> <p>15    Q.    What do you vote on?</p> <p>16    A.    Whatever the Executive</p> <p>17 Committee or whatever the different groups,</p> <p>18 committees come up with.</p> <p>19    Q.    What are your other</p> <p>20 responsibilities? You vote on motions and</p> <p>21 recommendations by the various UEP</p> <p>22 committees. Correct?</p> <p>23    A.    You attend the meeting, they</p> <p>24 always got a bunch of government people there</p> <p>25 that you're listening to. And they got the</p>
<p style="text-align: right;">Page 23</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     MR. DAVIS: Can those of us on</p> <p>3 the phone get the Bates number?</p> <p>4     MR. ALLEN: The Bates number is</p> <p>5 UE0295498.</p> <p>6 BY MR. ALLEN:</p> <p>7     Q.    Mr. Rust, the title of this</p> <p>8 document as I said before is, "UNITED EGG</p> <p>9 PRODUCERS BOARD MEMBERS &amp; COMMITTEE CHAIRMEN</p> <p>10 2000 DIRECTORY." Is that correct?</p> <p>11    A.    Yes.</p> <p>12    Q.    On the right side of the</p> <p>13 document, the third name down, do you see</p> <p>14 your name, Mr. Marcus Rust, Rose Acre Farms?</p> <p>15    A.    Yes.</p> <p>16    Q.    Does this refresh your</p> <p>17 recollection as to whether you were on the</p> <p>18 board in 2003?</p> <p>19    A.    I said I was on the board since</p> <p>20 the beginning, since we joined.</p> <p>21    Q.    Since you joined?</p> <p>22    A.    Yes.</p> <p>23    Q.    How does one become appointed</p> <p>24 to the UEP board?</p> <p>25    A.    Most large producers</p>	<p style="text-align: right;">Page 25</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2 attorneys. It's just an organization, I</p> <p>3 guess, what you'd call them.</p> <p>4     Q.    As a member of the board, were</p> <p>5 you responsible for staying generally</p> <p>6 informed as to UEP's activities?</p> <p>7     A.    Yes, I would guess so.</p> <p>8     Q.    Did you take your</p> <p>9 responsibilities as a member of the UEP board</p> <p>10 seriously?</p> <p>11    A.    Yes.</p> <p>12    Q.    Did you go to the board</p> <p>13 meetings when you could?</p> <p>14    A.    I attended the -- I would say</p> <p>15 at least 80 percent or better of the board</p> <p>16 meetings.</p> <p>17    Q.    Do you know roughly how many</p> <p>18 meetings you attended?</p> <p>19    A.    I said roughly 80 percent.</p> <p>20    Q.    How many meetings were there a</p> <p>21 year, do you remember?</p> <p>22    A.    I think they had a spring</p> <p>23 meeting and a fall meeting. I think roughly</p> <p>24 two meetings a year.</p> <p>25    Q.    Roughly two?</p>

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<p style="text-align: right;">Page 26</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     A.   No, wait. There might have</p> <p>3   been three meetings a year, because there</p> <p>4   was -- they had one southeastern usually,</p> <p>5   then one in Washington and then one in the</p> <p>6   late summer, early fall. So there are about</p> <p>7   three meetings a year, I think.</p> <p>8     Q.   Was the board of directors</p> <p>9   ultimately in charge of the UEP?</p> <p>10   A.   I think the Executive Committee</p> <p>11   was.</p> <p>12   Q.   Were members of the Executive</p> <p>13   Committee also members of the board?</p> <p>14   A.   I would assume they were. I'm</p> <p>15   not sure.</p> <p>16   Q.   So when the UEP committees</p> <p>17   passed motions or made recommendations, did</p> <p>18   the board have to approve those actions?</p> <p>19   A.   The board would vote on them,</p> <p>20   yes.</p> <p>21   Q.   Could the Executive Committee</p> <p>22   implement a recommendation from one of the</p> <p>23   committees without the board's approval?</p> <p>24   A.   The Executive Committee, I</p> <p>25   think, always did some things without -- or,</p>	<p style="text-align: right;">Page 28</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     Q.   When Rose Acre was a member of</p> <p>3   the UEP, was the United Voices newsletter</p> <p>4   sent to Rose Acre's offices?</p> <p>5     A.   It was sent to the main office.</p> <p>6     Q.   The main office, where is that?</p> <p>7     A.   Seymour.</p> <p>8     Q.   Seymour?</p> <p>9     A.   Indiana.</p> <p>10    Q.   Indiana. Was it only sent to</p> <p>11   the main office?</p> <p>12    A.   I never received it at my</p> <p>13   office. I'm based in Northwest Indiana.</p> <p>14    Q.   How many offices does Rose Acre</p> <p>15   have?</p> <p>16    A.   We have our main office in</p> <p>17   Seymour and then we have our -- it's kind of</p> <p>18   transportation job, I have an office</p> <p>19   upstairs. My wife was from Northern Indiana.</p> <p>20   She told me if I wanted her, I better live up</p> <p>21   there, because I was about 180 miles from my</p> <p>22   home.</p> <p>23    Q.   Understandable.</p> <p>24           So as far as you know, the UEP</p> <p>25   newsletter was only sent to the main office?</p>
<p style="text-align: right;">Page 27</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2   you know, I don't know what they did. I</p> <p>3   never served on the Executive Committee, so I</p> <p>4   have no knowledge of what they did.</p> <p>5     Q.   Are most of the other board</p> <p>6   members high level employees of other egg</p> <p>7   producers?</p> <p>8     A.   Either owners of farms or high</p> <p>9   level people of those farms.</p> <p>10    Q.   Is it fair to say that the</p> <p>11   board members worked together to further the</p> <p>12   interest of the UEP?</p> <p>13    A.   I think that was what the</p> <p>14   purpose of the board was.</p> <p>15    Q.   When you served on the board of</p> <p>16   the UEP, were you also furthering the</p> <p>17   interest of Rose Acre Farms?</p> <p>18    A.   Yes.</p> <p>19    Q.   Are you familiar with the</p> <p>20   United Voices newsletter?</p> <p>21    A.   Yes.</p> <p>22    Q.   That was the UEP's official</p> <p>23   newsletter. Right?</p> <p>24    A.   Yes, that's what they sent out</p> <p>25   to different people's offices.</p>	<p style="text-align: right;">Page 29</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     A.   Yes. I did not receive it at</p> <p>3   my place.</p> <p>4     Q.   So it wasn't sent to individual</p> <p>5   employees?</p> <p>6     A.   Individual employees of the</p> <p>7   company?</p> <p>8     Q.   Yes.</p> <p>9     A.   I think it was just sent to the</p> <p>10   main office.</p> <p>11    Q.   Was it sent in hard copy form?</p> <p>12    A.   I have no idea.</p> <p>13    Q.   Do you know whether it was ever</p> <p>14   e-mailed?</p> <p>15    A.   They would send out -- it was</p> <p>16   e-mailed eventually. But when I say it was</p> <p>17   e-mailed, you had to go in and click the</p> <p>18   thing and download it and kind of a pain in</p> <p>19   the butt. We're on a real slow Internet</p> <p>20   connection, so I don't mess with it that</p> <p>21   much.</p> <p>22    Q.   Is it true that the UEP</p> <p>23   e-mailed you the newsletter?</p> <p>24    A.   Yes.</p> <p>25           MR. BARNES: Excuse me, Counsel,</p>

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<p style="text-align: right;">Page 30</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     when you say "you," you mean the</p> <p>3     company?</p> <p>4 BY MR. ALLEN:</p> <p>5     Q.   Were you individually e-mailed</p> <p>6     the United Voices newsletter?</p> <p>7     A.   They would send out a notice</p> <p>8     that I would get this, it goes into my junk</p> <p>9     e-mail box because it's got an attachment to</p> <p>10    it, or spam filter, throw it over there, you</p> <p>11    have to drag it from the junk over to read</p> <p>12    it.</p> <p>13    Q.   So do you recall being sent --</p> <p>14    e-mailed the United Voices newsletter?</p> <p>15    A.   I remember seeing it at various</p> <p>16    times. But like I said, where I'm at, we're</p> <p>17    on a slow Internet connection and I did</p> <p>18    not -- I'm not a reader of news, or of -- I</p> <p>19    read Feedstuffs magazine when it came, you</p> <p>20    know, just on the Internet. I go on and I</p> <p>21    surf, but, you know, I read the Wall Street</p> <p>22    on there, I read Economist.</p> <p>23       MR. MONICA: Counsel, I think it</p> <p>24       would help if you maybe clarify the</p> <p>25       period of time you're talking about in</p>	<p style="text-align: right;">Page 32</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2       MR. BARNES: Thank you. I'm</p> <p>3       just --</p> <p>4       MS. ANDERSON: What is this one</p> <p>5       now?</p> <p>6       MR. ALLEN: 27.</p> <p>7       MR. BARNES: 27. The first one</p> <p>8       was 21. This is 27.</p> <p>9 BY MR. ALLEN:</p> <p>10    Q.   Mr. Rust, this is an e-mail to</p> <p>11    you.</p> <p>12       MR. BARNES: Do we have copies,</p> <p>13       Counsel?</p> <p>14       MR. ALLEN: They're coming</p> <p>15       around.</p> <p>16       MR. BARNES: If you hold up --</p> <p>17       MR. DAVIS: Could we get the</p> <p>18       Bates number on the phone?</p> <p>19       MR. ALLEN: I'm going to read</p> <p>20       it.</p> <p>21 BY MR. ALLEN:</p> <p>22    Q.   Mr. Rust, this is an e-mail to</p> <p>23    you from Patricia Huff, dated August 12,</p> <p>24    2004, Bates number RA001085. Is that</p> <p>25    correct?</p>
<p style="text-align: right;">Page 31</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     terms of before membership, after</p> <p>3     membership, all that stuff.</p> <p>4 BY MR. ALLEN:</p> <p>5     Q.   Mr. Rust, did you understand my</p> <p>6     question?</p> <p>7     A.   About what?</p> <p>8     Q.   Whether you were e-mailed the</p> <p>9     United Voices newsletter?</p> <p>10    A.   I had received it on occasion.</p> <p>11    I don't know if I got it every time or not.</p> <p>12    Q.   Do you know over what period of</p> <p>13    time you were e-mailed the newsletter?</p> <p>14    A.   No.</p> <p>15    Q.   I'm handing you what has been</p> <p>16    marked as -- I'm sorry, what's the exhibit</p> <p>17    number?</p> <p>18       MR. BARNES: What's the exhibit</p> <p>19       number, Marcus?</p> <p>20       THE WITNESS: Let's see.</p> <p>21       Exhibit 27.</p> <p>22       MR. BARNES: Counsel, is there</p> <p>23       any rhyme or reason to these exhibit</p> <p>24       numbers?</p> <p>25       MR. ALLEN: We'll get to them.</p>	<p style="text-align: right;">Page 33</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     A.   Yes.</p> <p>3     Q.   The subject of the e-mail says,</p> <p>4     "UEP Newsletter." Correct?</p> <p>5     A.   Yes.</p> <p>6     Q.   The attachment line says,</p> <p>7     "united_voices_current.pdf." Correct?</p> <p>8     A.   Yes.</p> <p>9     Q.   In the body of the e-mail it</p> <p>10    says, "Attached is the latest edition of the</p> <p>11    United Voices newsletter." Correct?</p> <p>12    A.   Yes.</p> <p>13    Q.   So does this, by any chance,</p> <p>14    refresh your recollection as to whether you</p> <p>15    were regularly e-mailed the United Voices</p> <p>16    newsletter in 2004?</p> <p>17       MR. BARNES: I'm going to object</p> <p>18       to the form of the question. His</p> <p>19       recollection did not need refreshing,</p> <p>20       and your question included the term</p> <p>21       "regularly." I'm not sure this</p> <p>22       document indicates that. Go ahead, if</p> <p>23       you can answer it, Mr. Rust, please</p> <p>24       do.</p> <p>25       THE WITNESS: I previously</p>

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1     MARCUS RUST - HIGHLY CONFIDENTIAL

2     answered that I had -- when the

3     newsletter comes, it would come in,

4     and because it has an attachment, it

5     was over in our junk spam file and I'd

6     have to go over and get it and dig it

7     out and then go through a slow

8     download if I wanted to read it. And

9     I elected most of the time not to read

10    it.

11  BY MR. ALLEN:

12    Q.   Do you recall whether you were

13    regularly e-mailed the newsletter in 2005?

14    A.   I have no reason to believe

15    that I was or was not.

16    Q.   I'm handing you what has been

17    marked as Exhibit 28. It's Bates number

18    RA0001103. This is another e-mail from

19    Patricia Huff to you dated November 10, 2005.

20    The subject line says, "UEP Newsletter," and

21    the attachment line says,

22    "united\_voices\_current.pdf." Is that

23    correct?

24    A.   Yes.

25    Q.   And, again, it says, "Attached

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1     MARCUS RUST - HIGHLY CONFIDENTIAL

2     is the latest edition of the United Voices

3     newsletter." Correct?

4     A.   Yes.

5     Q.   This is in 2005. Do you know

6     whether you were regularly e-mailed United

7     Voices in 2005?

8     MR. BARNES: Same objection.

9     THE WITNESS: Like I said, sir,

10    I never ever went in and removed my

11    name from their automatic newsletter

12    thing. Their records will show

13    whether I was on the list or not.

14  BY MR. ALLEN:

15    Q.   Do you have any reason to

16    believe that you weren't regularly e-mailed

17    the newsletter in 2005?

18    A.   Like I said earlier, I was

19    e-mailed them, I can't say that I ever read

20    any or all of them.

21    Q.   Were you regularly e-mailed the

22    newsletter in 2006?

23    A.   Probably.

24    Q.   How about 2007?

25    A.   I was probably on the list for

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1     MARCUS RUST - HIGHLY CONFIDENTIAL

2     the entire time with the case or the -- as a

3     board member. I think they're supposed to

4     send them out to the board members.

5     Q.   So it's fair to say you were

6     most likely e-mailed the newsletter the

7     entire time you were in the UEP?

8     A.   Yes.

9     Q.   Did you read the United Voices

10    newsletter?

11    MR. BARNES: Objection. Asked

12    and answered.

13    THE WITNESS: I said I've read

14    it sometimes. A lot of times I did

15    not.

16  BY MR. ALLEN:

17    Q.   What percentage of the times do

18    you think you read it?

19    A.   20 percent maybe.

20    Q.   20 percent? So this is -- do

21    you remember whether it was a biweekly

22    newsletter?

23    A.   Quarterly, I think.

24    Q.   Quarterly?

25    A.   Yeah. I'm not sure exactly how

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1     MARCUS RUST - HIGHLY CONFIDENTIAL

2     often they sent it.

3     Q.   Do you know whether other Rose

4     Acre employees read the newsletter?

5     A.   I think -- well, I'm sure if

6     they got sent to the main office, they might

7     have. If they got -- if it was on an e-mail

8     list, they might have read it. I have no

9     idea. I recall no one ever calling me and

10    say, hey, I read something in the newsletter.

11    Q.   So you've never discussed the

12    newsletter with other employees?

13    A.   No, it's kind of a whole bunch

14    of this stuff. Never paid a lot of attention

15    to it.

16    Q.   What do you mean by "this

17    stuff"?

18    A.   They got all these little

19    statistical charts and all that kind of stuff

20    in there. We never partook into some of

21    their theories, so...

22    Q.   But you just mentioned that

23    other employees, other Rose Acre employees

24    did read the newsletter.

25    MR. BARNES: Objection to form

<p style="text-align: right;">Page 38</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     of the question.</p> <p>3         THE WITNESS: I have no idea. I</p> <p>4     don't think they did.</p> <p>5         MR. BARNES: Let me get my</p> <p>6     objection in.</p> <p>7         THE WITNESS: I said -- okay.</p> <p>8     Sorry.</p> <p>9         MR. BARNES: Object to the form</p> <p>10    of the question. It misstates the</p> <p>11    witness' testimony.</p> <p>12 BY MR. ALLEN:</p> <p>13    Q.   Is it fair so say that between</p> <p>14    yourself and other Rose Acre employees, that</p> <p>15    Rose Acre, as a company, was aware of what</p> <p>16    was being written in the newsletter?</p> <p>17         MR. BARNES: Object to the form.</p> <p>18         THE WITNESS: Only if they would</p> <p>19    have read it. I don't -- they would</p> <p>20    have to read it to be aware of what</p> <p>21    was in the newsletter.</p> <p>22 BY MR. ALLEN:</p> <p>23    Q.   Is it fair to say that other</p> <p>24    employees were reading the newsletter and</p> <p>25    between yourself and the other employees,</p>	<p style="text-align: right;">Page 40</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     Exhibit 1 which is an October 2002 edition of</p> <p>3     the UEP's newsletter, Bates stamped</p> <p>4     CM00429325-334 -- I'm sorry, through 334. Is</p> <p>5     that correct?</p> <p>6         MR. BARNES: Do you need your</p> <p>7     glasses?</p> <p>8         THE WITNESS: Yes, I left them</p> <p>9     in the other --</p> <p>10         MR. BARNES: He needs his</p> <p>11    glasses.</p> <p>12         - - -</p> <p>13         (A discussion off the record</p> <p>14    occurred.)</p> <p>15         - - -</p> <p>16         THE WITNESS: You can go ahead,</p> <p>17    I can strain for a little bit.</p> <p>18         MR. BARNES: Go ahead.</p> <p>19    Depending upon what you ask him, he</p> <p>20    may be able to read it without his</p> <p>21    glasses.</p> <p>22         THE WITNESS: I can strain, it</p> <p>23    just gives me a headache.</p> <p>24 BY MR. ALLEN:</p> <p>25    Q.   Mr. Rust, earlier you testified</p>
<p style="text-align: right;">Page 39</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     Rose Acre as a company was aware of what was</p> <p>3     being written?</p> <p>4         MR. BARNES: Objection to form.</p> <p>5         THE WITNESS: I'm aware of no</p> <p>6     one who read the newsletter. There</p> <p>7     may have been some. I had no</p> <p>8     conversations with any of our people</p> <p>9     about the newsletter.</p> <p>10 BY MR. ALLEN:</p> <p>11    Q.   Fair enough. Did you review</p> <p>12    United Voices newsletters to prepare for your</p> <p>13    deposition?</p> <p>14    A.   No. Let me restate that.</p> <p>15         I was showed various</p> <p>16    newsletters. I don't -- I have never sat</p> <p>17    down and looked at every one of them.</p> <p>18         - - -</p> <p>19         (Exhibit 1, 10/7/02 United</p> <p>20    Voices newsletter, Bates CM00429325 -</p> <p>21    CM00429334, was marked for</p> <p>22    identification.)</p> <p>23         - - -</p> <p>24 BY MR. ALLEN:</p> <p>25    Q.   Mr. Rust, I've just handed you</p>	<p style="text-align: right;">Page 41</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     that the Executive Committee to some extent</p> <p>3     runs the UEP. Is that correct?</p> <p>4    A.   That's what I understand.</p> <p>5    Q.   Could the Executive Committee</p> <p>6    override a vote of the UEP board of</p> <p>7    directors?</p> <p>8    A.   I have no idea.</p> <p>9    Q.   You don't know?</p> <p>10   A.   No.</p> <p>11   Q.   In your experience on the board</p> <p>12   of the UEP, did the Executive Committee ever</p> <p>13   override, as far as you know, a vote of the</p> <p>14   board of directors?</p> <p>15   A.   I was never privy to any --</p> <p>16   what went on at the Executive Committee</p> <p>17   meetings. They always had those before the</p> <p>18   board meetings. They had -- there were times</p> <p>19   that, you know, you knew that they had a</p> <p>20   meeting, but I was never in one or knew</p> <p>21   anything about any of them.</p> <p>22   Q.   Again, Mr. Rust, I'd like to</p> <p>23   direct your attention to the newsletter I</p> <p>24   just handed to you. The top of the document</p> <p>25   shows that Gene Gregory was the editor. Do</p>

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<p style="text-align: right;">Page 42</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     you know Mr. Gregory?</p> <p>3     A.    Yes.</p> <p>4     Q.    When did you meet him?</p> <p>5     A.    Many years ago before he -- he</p> <p>6     originally had what they called the Midwest</p> <p>7     UEP.</p> <p>8     Q.    Do you know approximately when</p> <p>9     you met him?</p> <p>10    A.    Late '80s, I guess.</p> <p>11    Q.    How often did you communicate</p> <p>12    with Mr. Gregory after Rose Acre joined UEP?</p> <p>13    A.    I would say several times a</p> <p>14    year. I'm not sure exactly how many.</p> <p>15    Q.    Did you communicate with him</p> <p>16    before Rose Acre joined the UEP?</p> <p>17    A.    He would come in trying to get</p> <p>18    us to join.</p> <p>19    Q.    How often would you communicate</p> <p>20    with him?</p> <p>21    A.    I don't recall. Several times.</p> <p>22    Multiple times.</p> <p>23    Q.    I'd like to direct your</p> <p>24    attention to the article on the first page of</p> <p>25    the newsletter titled, "Layer Flock Size</p>	<p style="text-align: right;">Page 44</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     the egg industry and having served on the UEP</p> <p>3     board of directors for many years, why could</p> <p>4     an increasing flock size be a problem for egg</p> <p>5     producers?</p> <p>6     A.    There were a lot of producers</p> <p>7     like us that were in constant growing,</p> <p>8     expansion mode. And that's why the various</p> <p>9     members of UEP prior to you suing us, because</p> <p>10    they thought we was growing too fast at their</p> <p>11    expense. We've always been a very</p> <p>12    competitive organization or company, and</p> <p>13    that's why a lot of them never liked us.</p> <p>14    Q.    So -- but generally speaking,</p> <p>15    if the nation's flock size among all the egg</p> <p>16    producers is very large, how does that</p> <p>17    negatively impact egg producers generally?</p> <p>18    A.    If you get -- if the flock of</p> <p>19    chickens gets high and then your demand</p> <p>20    period isn't -- any time your demand is less</p> <p>21    than your supply, the market reacts.</p> <p>22    Q.    How so?</p> <p>23    A.    It can go up or go down.</p> <p>24    Q.    So when the demand is less than</p> <p>25    supply, what does that do to the prices?</p>
<p style="text-align: right;">Page 43</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     Continues to Grow."</p> <p>3     Do you see that?</p> <p>4     A.    Yes.</p> <p>5     Q.    The first paragraph of that</p> <p>6     article states, "Despite a hatch being below</p> <p>7     the comparable months for 10 consecutive</p> <p>8     months, the nation's flock size continues to</p> <p>9     grow. Layers on September 1st were</p> <p>10    inventoried, by USDA at 278.1 million</p> <p>11    compared to 275.4 on the same date of 2001."</p> <p>12    In the second paragraph it</p> <p>13    says, "The lack of hen disappearance (or</p> <p>14    disposal) has created the problem of an</p> <p>15    increasing flock size."</p> <p>16    Did I read that correctly?</p> <p>17    A.    Yes.</p> <p>18    Q.    Why was the increasing flock</p> <p>19    size in October 2002 a problem for egg</p> <p>20    producers?</p> <p>21    A.    In October, I'm not sure -- it</p> <p>22    probably depends on whatever the egg market</p> <p>23    may have been. I have no idea what he's</p> <p>24    referring to there.</p> <p>25    Q.    So based on your experience in</p>	<p style="text-align: right;">Page 45</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     MR. BARNES: Objection. Asked</p> <p>3     and answered.</p> <p>4     THE WITNESS: The market. You</p> <p>5     go under and you look at a sheet and</p> <p>6     you'll see it goes up and down, up and</p> <p>7     down. Then you'll see another chart,</p> <p>8     a bar chart, the demand will do the</p> <p>9     same thing.</p> <p>10    BY MR. ALLEN:</p> <p>11    Q.    I still haven't heard an</p> <p>12    explanation as to why a large flock size</p> <p>13    negatively impacts egg producers. What does</p> <p>14    that do to the economics of the egg industry</p> <p>15    that negatively affects the egg producers?</p> <p>16    MR. BARNES: Objection.</p> <p>17    THE WITNESS: Well, a chicken</p> <p>18    farmer, to have chickens you first</p> <p>19    have to have a chicken house to put</p> <p>20    them in. So you have to go make a 20</p> <p>21    year, 15 year or 30 year, like a</p> <p>22    mortgage, you buy a house. So you go</p> <p>23    out and you make an investment into</p> <p>24    the chicken house. Then you have to</p> <p>25    place your order. If you're an</p>

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<p style="text-align: right;">Page 46</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     independent farm, like a lot of the</p> <p>3     United Egg Producers were, they had to</p> <p>4     go place orders with various</p> <p>5     hatcheries around the country to grow</p> <p>6     that chicken. They have to grow that</p> <p>7     chicken and place the order for that</p> <p>8     chicken six months in advance of when</p> <p>9     they want it. Because the hatchery</p> <p>10    breeder supply people have to go put</p> <p>11    in breeders to have a supply of chicks</p> <p>12    to do that. In our company, we're</p> <p>13    integrated. When I say "integrated,"</p> <p>14    we have our own breeder flock, our own</p> <p>15    hatchery. We -- contrary to a lot of</p> <p>16    the smaller producers, we were always</p> <p>17    all out maximizing every chick we</p> <p>18    could grow, every pullet we could</p> <p>19    grow, and we build every chicken house</p> <p>20    we can build as long as we have the</p> <p>21    money to do it. Whenever we would run</p> <p>22    out of money, it would be the only</p> <p>23    time we wouldn't build a chicken</p> <p>24    house, or couldn't borrow money to</p> <p>25    build a chicken house. If you study</p>	<p style="text-align: right;">Page 48</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     Q.   I'd like to direct your</p> <p>3     attention to the fourth paragraph of that</p> <p>4     same article. It says, "If you have held</p> <p>5     hens to older ages or have backfilled houses</p> <p>6     in anticipation that past months of reduced</p> <p>7     hatch or the increasing space required for</p> <p>8     the animal welfare guidelines would bring</p> <p>9     profitable prices by this fall or winter,</p> <p>10    then it is time to rethink your position.</p> <p>11    Get rid of those old hens and stop</p> <p>12    backfilling as quickly as possible. There</p> <p>13    has never been a shortage of eggs to fill the</p> <p>14    Thanksgiving and Christmas markets."</p> <p>15         Did I read that correctly?</p> <p>16    A.   Yes.</p> <p>17    Q.   Is it fair to say that the UEP</p> <p>18    is recommending that egg producers stop</p> <p>19    backfilling as soon as possible in that</p> <p>20    article?</p> <p>21         MR. BARNES: Objection. The</p> <p>22    document speaks for itself.</p> <p>23         THE WITNESS: I have no idea</p> <p>24    what they --</p> <p>25    BY MR. ALLEN:</p>
<p style="text-align: right;">Page 47</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     our growth, you'll see through the</p> <p>3     years we have grown. Some people --</p> <p>4     other people have grown faster than</p> <p>5     what we have. Some have grown slower.</p> <p>6     And some went out of business. That's</p> <p>7     the up and down I'm talking about.</p> <p>8    BY MR. ALLEN:</p> <p>9     Q.   I'm not hearing why a large</p> <p>10   flock size negatively impacts, generally</p> <p>11   speaking, all egg producers?</p> <p>12         MR. BARNES: Object to form.</p> <p>13         THE WITNESS: We never worried</p> <p>14   about what the flock size was, sir.</p> <p>15   BY MR. ALLEN:</p> <p>16   Q.   Not at all?</p> <p>17   A.   No.</p> <p>18   Q.   So if the nation's flock size</p> <p>19   was bigger than usual, it had no impact on</p> <p>20   Rose Acre?</p> <p>21   A.   It would affect, as long as we</p> <p>22   was the least cost producer, we still went</p> <p>23   out and built, and that's why we got sued.</p> <p>24   We had three antitrust lawsuits filed against</p> <p>25   us by various egg producers in the '80s.</p>	<p style="text-align: right;">Page 49</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     Q.   You see the sentence, then it</p> <p>3     says, "Get rid of those old hens and stop</p> <p>4     backfilling as quickly as possible." Right?</p> <p>5     A.   I assume that was Mr. Gregory's</p> <p>6     opinion.</p> <p>7     Q.   What does backfilling mean?</p> <p>8     A.   That's where you take a flock</p> <p>9     of birds that you were going to get rid of</p> <p>10   and instead of sending them to the soup</p> <p>11   kitchen or the dog food plant, you take that</p> <p>12   chicken and move them in and put them on top</p> <p>13   of other chickens. And then when those other</p> <p>14   chickens -- when you throw that chicken in</p> <p>15   there, that's when what they call the hen</p> <p>16   pecking order comes in. The other chickens</p> <p>17   will sometimes attack that chicken, and it</p> <p>18   provided an outcry with animal rights groups</p> <p>19   because when you do backfilling because of</p> <p>20   pick outs, then you have chickens eating each</p> <p>21   other. That's where the old term the hen</p> <p>22   pecking order comes in.</p> <p>23   Q.   So do the chickens that are</p> <p>24   backfilled, are they added to a laying flock?</p> <p>25   A.   They are added to an existing</p>



<p style="text-align: right;">Page 50</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2 house where you either stuffed extra chickens</p> <p>3 in or you -- it all depends. It depends on</p> <p>4 what the egg market was. There would be</p> <p>5 times that if the egg market was super high,</p> <p>6 producers -- we would -- you know, producers</p> <p>7 would go out, you know, we're all about</p> <p>8 maximizing dollars and profits. And there</p> <p>9 would be times that just because of the super</p> <p>10 high egg market, if you have a house that was</p> <p>11 fairly low in bird numbers due to mortality,</p> <p>12 we'd go stuff extra in. Our mortality would</p> <p>13 go up.</p> <p>14     Q.   And these houses house laying</p> <p>15 hens. Correct?</p> <p>16     A.   Yeah. One of the arguments</p> <p>17 that we -- that you have with animal rights</p> <p>18 groups is, is it better to molt the chicken,</p> <p>19 is it better to backfill it into a chicken</p> <p>20 house or kill it.</p> <p>21     Q.   Is it fair to say, though, that</p> <p>22 egg producers backfilled in order to produce</p> <p>23 more eggs?</p> <p>24     A.   You would get more eggs per</p> <p>25 space, henhouse space. You wouldn't get more</p>	<p style="text-align: right;">Page 52</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2 numbers. And a lot of times at the</p> <p>3 various UEP meetings there would be</p> <p>4 USDA guys come in and tell what they</p> <p>5 projected the flock numbers to be and,</p> <p>6 you know, the -- I guess the</p> <p>7 agricultural marketing service or</p> <p>8 something like that of USDA. UEP</p> <p>9 would take their numbers that USDA</p> <p>10 generated for the industry for</p> <p>11 agriculture, I guess, for the farmers.</p> <p>12 And they would then take a -- what, I</p> <p>13 guess, the editor, what Gene's</p> <p>14 assumption would be at the time of</p> <p>15 what he felt, what this Don Bell guy</p> <p>16 or Lee Schrader guy, these are two</p> <p>17 like economists that was in the egg</p> <p>18 business, these same numbers would be</p> <p>19 published in Feedstuffs. It's a</p> <p>20 magazine for the industry. And they</p> <p>21 would have projections of what they</p> <p>22 thought the egg market was going to be</p> <p>23 so producers like us could make the</p> <p>24 decisions whether we thought we should</p> <p>25 be increasing our flock, decreasing</p>
<p style="text-align: right;">Page 51</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2 eggs per hen when you backfilled.</p> <p>3     Q.   So for henhouse space, if you</p> <p>4 backfill, you would get more eggs?</p> <p>5     A.   Correct.</p> <p>6     Q.   So in this newsletter, when it</p> <p>7 says, "Get rid of those old hens and stop</p> <p>8 backfilling as quickly as possible," isn't</p> <p>9 the UEP suggesting that egg producers produce</p> <p>10 less eggs?</p> <p>11         MR. BARNES: Object to the form.</p> <p>12         MR. DAVIS: Objection. Lacks</p> <p>13 foundation.</p> <p>14         COURT REPORTER: Who Objected on</p> <p>15 the phone?</p> <p>16         MR. DAVIS: This is Evan Davis.</p> <p>17         MR. BARNES: You can go ahead</p> <p>18 and answer.</p> <p>19         THE WITNESS: UEP was a</p> <p>20 voluntary organization. They would --</p> <p>21 from my understanding they've always</p> <p>22 put out these charts, these flow</p> <p>23 things, they take -- USDA publishes</p> <p>24 these -- USDA Department of</p> <p>25 Agriculture would generate the</p>	<p style="text-align: right;">Page 53</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2 our flock. You know, it's kind of</p> <p>3 like the board of trade, you got the</p> <p>4 corn market, you got futures prices.</p> <p>5 Eggs used to have that, but it got so</p> <p>6 thinly traded, they quit that. So</p> <p>7 there was no futures market for egg</p> <p>8 farmers to sell on in the future.</p> <p>9 BY MR. ALLEN:</p> <p>10     Q.   Just to say it again, Mr. Rust,</p> <p>11 you testified that producers backfilled to</p> <p>12 produce more eggs. Is that correct?</p> <p>13         MR. BARNES: Object to the form.</p> <p>14         THE WITNESS: That's the reason</p> <p>15 you would put more chickens in the</p> <p>16 house to get more eggs out.</p> <p>17 BY MR. ALLEN:</p> <p>18     Q.   And then I asked if the UEP by</p> <p>19 recommending that producers stop backfilling</p> <p>20 is essentially recommending that they produce</p> <p>21 less eggs?</p> <p>22     A.   You could assume that from that</p> <p>23 recommendation.</p> <p>24     Q.   Why would the UEP suggest that</p> <p>25 producers produce less eggs?</p>

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<p style="text-align: right;">Page 54</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2           MR. BARNES: Objection. Calls</p> <p>3     for speculation.</p> <p>4           THE WITNESS: I would assume</p> <p>5     they did it as a service to their</p> <p>6     members of telling them, well, you</p> <p>7     guys, if you -- that's what I would</p> <p>8     assume, that's something that their</p> <p>9     members wanted.</p> <p>10  BY MR. ALLEN:</p> <p>11     Q.   Is it fair to say that in this</p> <p>12     article the UEP is recommending that</p> <p>13     producers produce less eggs to reduce the</p> <p>14     supply?</p> <p>15           MR. BARNES: Objection.</p> <p>16           THE WITNESS: Restate your</p> <p>17     question again?</p> <p>18  BY MR. ALLEN:</p> <p>19     Q.   Is it fair in this article that</p> <p>20     the UEP is suggesting that egg producers stop</p> <p>21     backfilling eggs -- or excuse me, stop</p> <p>22     backfilling chickens so that they will</p> <p>23     produce less eggs as an industry and reduce</p> <p>24     the supply of eggs?</p> <p>25           MR. BARNES: Same objection.</p>	<p style="text-align: right;">Page 56</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     newsletter, Bates stamped UE0875297 through</p> <p>3     5304. Is that correct?</p> <p>4     A.   Yes.</p> <p>5     Q.   And Rose Acre was a member of</p> <p>6     the UEP in 2003. Right?</p> <p>7     A.   Yes, we just joined.</p> <p>8     Q.   You joined in 2002. Is that</p> <p>9     correct?</p> <p>10    A.   Yes. 2002, 2003, I would call</p> <p>11    that just joining.</p> <p>12    Q.   Fair enough. And you were on</p> <p>13    the UEP board of directors in 2003?</p> <p>14    A.   Yes.</p> <p>15    Q.   I'll direct your attention to</p> <p>16    the article on the first page titled, "Don't</p> <p>17    Screw Up A Good Thing."</p> <p>18           Do you see that?</p> <p>19    A.   Yes.</p> <p>20    Q.   The first paragraph of that</p> <p>21    article states, "Urner Barry's Midwest Large</p> <p>22    quote averaged \$1.00 per dozen during August</p> <p>23    and 14.6 cents more during the first</p> <p>24    eight...months than during the same period a</p> <p>25    year earlier. When considering that the</p>
<p style="text-align: right;">Page 55</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2           THE WITNESS: I'm not sure what</p> <p>3     they're saying. If I read it and my</p> <p>4     assumption --</p> <p>5  BY MR. ALLEN:</p> <p>6     Q.   Your understanding, yes.</p> <p>7     A.   Not my understanding of what</p> <p>8     they said, but my guesstimate of what I'm</p> <p>9     suggest -- they're -- or I think they're</p> <p>10    saying, hey, guys, if you don't do this or</p> <p>11    you don't do that, you might be profitable,</p> <p>12    you might be less profitable. I think they</p> <p>13    make suggestions to the farm group, it's all</p> <p>14    up to the individual producer on a voluntary</p> <p>15    basis what you do or don't do.</p> <p>16           - - -</p> <p>17           (Exhibit 2, United Voices</p> <p>18     newsletter, Bates UE0875297 -</p> <p>19     UE0875304, was marked for</p> <p>20     identification.)</p> <p>21           - - -</p> <p>22  BY MR. ALLEN:</p> <p>23     Q.   Mr. Rust, I've just handed you</p> <p>24     what's been marked as Exhibit 2 which is a</p> <p>25     September 2003 edition of United Voices</p>	<p style="text-align: right;">Page 57</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     industry has reduced the pullet chick hatch</p> <p>3     by 14.7 million pullets since April 2002</p> <p>4     things were looking promising for a prolonged</p> <p>5     period of profitability."</p> <p>6           Did I read that correctly?</p> <p>7     A.   That's what you read, yes.</p> <p>8     Q.   So isn't the first paragraph</p> <p>9     saying a prolonged period of profitability</p> <p>10    looked promising because the egg industry had</p> <p>11    reduced the pullet hatch by 14.7 pullets</p> <p>12    since 2002?</p> <p>13           MR. BARNES: Objection. The</p> <p>14    document speaks for itself.</p> <p>15           THE WITNESS: That's what it</p> <p>16    says.</p> <p>17  BY MR. ALLEN:</p> <p>18     Q.   What is a pullet?</p> <p>19     A.   That's a young chicken.</p> <p>20     Q.   That becomes a laying hen?</p> <p>21     A.   Correct.</p> <p>22     Q.   So when the pullet hatch goes</p> <p>23     down, doesn't that mean that the laying flock</p> <p>24     goes down and, therefore, egg production goes</p> <p>25     down?</p>

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<p style="text-align: right;">Page 58</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     A.   Not necessarily.</p> <p>3     Q.   Why is that?</p> <p>4     A.   Because the producer has the</p> <p>5   option of molting. So you may have some</p> <p>6   producers, if they run out of money, they</p> <p>7   will double molt or triple molt the flock.</p> <p>8   They might keep a flock of birds one year,</p> <p>9   two years, three years, four years. I'm</p> <p>10   aware of a producer that kept flocks five</p> <p>11   years.</p> <p>12    Q.   If a producer doesn't -- do</p> <p>13   most producers molt?</p> <p>14           MR. BARNES: Object to form.</p> <p>15           THE WITNESS: I would assume</p> <p>16   most do.</p> <p>17   BY MR. ALLEN:</p> <p>18    Q.   On page 2 the newsletter says,</p> <p>19   "One sure way of having poorer egg prices is</p> <p>20   by increasing egg supplies through holding</p> <p>21   hens longer and keeping hens that should be</p> <p>22   disposed."</p> <p>23           Do you see that?</p> <p>24    A.   Yes.</p> <p>25    Q.   Do you agree with that</p>	<p style="text-align: right;">Page 60</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2   kind of a guesstimate in the industry. No</p> <p>3   one really reports their numbers of what gets</p> <p>4   killed because of how they kill them. It's</p> <p>5   not -- the animal rightists don't like it.</p> <p>6   But, you know, at times we put them in dump</p> <p>7   trailers and take them to the landfill and</p> <p>8   dumb them, cover them up with dirt. It</p> <p>9   creates, you know, lots of -- we had</p> <p>10   newspaper photos once that someone took</p> <p>11   pictures of it, chickens that didn't die in</p> <p>12   the landfill. And then, you know, you -- we</p> <p>13   don't like to -- it's not a good thing to</p> <p>14   show the animal rights groups what happens to</p> <p>15   all the birds, so we as an industry don't</p> <p>16   fully tell what happens to the birds. So the</p> <p>17   flock number is one that I think USDA kind of</p> <p>18   guesses at because they really don't know how</p> <p>19   many birds are still left out there.</p> <p>20    Q.   So, Mr. Rust, in this article,</p> <p>21   the UEP is recommending to its members</p> <p>22   that -- strike that.</p> <p>23           This newsletter is addressed to</p> <p>24   all UEP members. Do you agree?</p> <p>25    A.   Yes.</p>
<p style="text-align: right;">Page 59</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2   statement based on your experience?</p> <p>3    A.   Not necessarily.</p> <p>4    Q.   No. Why is that?</p> <p>5    A.   Just like I told you, you</p> <p>6   never -- better restate your question again.</p> <p>7    Q.   You see the sentence that says,</p> <p>8   "One sure way of having poorer egg prices is</p> <p>9   by increasing egg supplies through holding</p> <p>10   hens longer and keeping hens that should be</p> <p>11   disposed."</p> <p>12           Based on your experience in the</p> <p>13   egg industry, do you believe that -- you</p> <p>14   agree with that statement?</p> <p>15    A.   It's possible. Sometimes --</p> <p>16   you know, increasing the hatch sometimes will</p> <p>17   cause the market to go down. If the</p> <p>18   producers hang onto a lot of birds and don't</p> <p>19   sell them, that can cause the egg supply to</p> <p>20   be longer. You know, they're --</p> <p>21    Q.   What do you mean by "longer"?</p> <p>22   I'm sorry.</p> <p>23    A.   The supply. If you got -- if</p> <p>24   people don't sell their chickens or don't</p> <p>25   kill them, you know, how many gets killed is</p>	<p style="text-align: right;">Page 61</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2    Q.   It's addressing UEP members</p> <p>3   generally?</p> <p>4    A.   Correct.</p> <p>5    Q.   And the newsletter, UEP is</p> <p>6   saying to its members that one way of having</p> <p>7   poorer egg prices is by increasing egg</p> <p>8   supplies to all of its members. And then it</p> <p>9   says, "Don't screw up a good thing!!!" What</p> <p>10   do you understand that to mean?</p> <p>11           MR. DAVIS: Objection. Calls</p> <p>12   for speculation.</p> <p>13           THE WITNESS: I'm not sure what</p> <p>14   he meant by that.</p> <p>15   BY MR. ALLEN:</p> <p>16    Q.   I'm not asking you to</p> <p>17   speculate, Mr. Rust. Based on your</p> <p>18   experience as a board of director -- or as a</p> <p>19   member of the board of directors with the UEP</p> <p>20   and having been a member of the UEP since</p> <p>21   2002, what do you understand as you sit here</p> <p>22   today that statement to mean, "Don't screw up</p> <p>23   a good thing"?</p> <p>24    A.   My assumption --</p> <p>25           MR. DAVIS: Excuse me. Calls</p>

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<p style="text-align: right;">Page 62</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     for speculation and lacks foundation</p> <p>3     as to something he did not write.</p> <p>4     MR. BARNES: Go ahead and</p> <p>5     answer, Mr. Rust.</p> <p>6     THE WITNESS: I would assume</p> <p>7     that means a profitable time period.</p> <p>8     I would assume.</p> <p>9 BY MR. ALLEN:</p> <p>10    Q.    So when it says don't screw up</p> <p>11    a good thing to its members, don't you agree</p> <p>12    that the UEP is suggesting that its members</p> <p>13    should not increase egg supplies?</p> <p>14    MR. DAVIS: Objection. Calls</p> <p>15    for speculation as to what the UEP is</p> <p>16    suggesting or to what -- as to what</p> <p>17    Mr. Gregory meant by that.</p> <p>18    MS. ANDERSON: Objection.</p> <p>19 BY MR. ALLEN:</p> <p>20    Q.    Go ahead and answer, Mr. Rust,</p> <p>21    you can answer.</p> <p>22    A.    You have to redo your question.</p> <p>23    Q.    So when it says don't screw up</p> <p>24    a good thing to its members, don't you agree</p> <p>25    that the UEP is suggesting that its members</p>	<p style="text-align: right;">Page 64</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     recollection.</p> <p>3     Q.    Do you know whether Rose Acre</p> <p>4     as an organization ever contacted UEP to</p> <p>5     object to anything that was written in a UEP</p> <p>6     newsletter?</p> <p>7     A.    I would have no reason to know</p> <p>8     why anyone would care what's written in this</p> <p>9     newsletter.</p> <p>10    Q.    Is that a yes or a no? Do you</p> <p>11    know whether anyone at Rose Acre --</p> <p>12    A.    I said I have -- I said I know</p> <p>13    of no one that had any reason to have called</p> <p>14    them. Maybe they did, maybe they didn't. I</p> <p>15    don't know.</p> <p>16    Q.    Did you see this specific</p> <p>17    newsletter when you prepared for your</p> <p>18    deposition, Mr. Rust?</p> <p>19    A.    I can't say if I did or didn't.</p> <p>20    I looked at several of them.</p> <p>21        - - -</p> <p>22        (Exhibit 3, 4/04 UEP's United</p> <p>23        Voices newsletter, Bates UE0754321 -</p> <p>24        UE0754330, was marked for</p> <p>25        identification.)</p>
<p style="text-align: right;">Page 63</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     should not increase egg supplies?</p> <p>3     A.    It may have been what they were</p> <p>4     speculating or saying.</p> <p>5     Q.    You don't have an understanding</p> <p>6     as you sit here today?</p> <p>7     A.    I don't have an understanding,</p> <p>8     no.</p> <p>9     Q.    As a UEP board member, did you</p> <p>10    contact anyone at UEP to object to this</p> <p>11    article?</p> <p>12    A.    I never ever contacted anyone</p> <p>13    at UEP about anyone that wrote a newsletter.</p> <p>14    MR. BARNES: Excuse me, Counsel.</p> <p>15    I just want to interpose an objection.</p> <p>16    You asked the witness if he contacted</p> <p>17    anybody at UEP to object to the</p> <p>18    article, but you never established</p> <p>19    that he read the article. So I object</p> <p>20    to the form of the question.</p> <p>21 BY MR. ALLEN:</p> <p>22    Q.    You understood my question,</p> <p>23    didn't you, Mr. Rust?</p> <p>24    A.    I have never ever contacted</p> <p>25    anybody at UEP about any news article, to my</p>	<p style="text-align: right;">Page 65</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2        - - -</p> <p>3 BY MR. ALLEN:</p> <p>4     Q.    Mr. Rust, I've just handed you</p> <p>5     what's been marked as Exhibit 3, Bates</p> <p>6     stamped UE0754321. This is an April of 2004</p> <p>7     edition of UEP's United Voices newsletter.</p> <p>8     Correct?</p> <p>9     A.    Yes. It's on the bottom.</p> <p>10    Q.    And Rose Acre was a member of</p> <p>11    the UEP in 2004. Correct?</p> <p>12    A.    I previously stated we were a</p> <p>13    member from 2002 till present.</p> <p>14    Q.    Do you remember whether you</p> <p>15    received this specific newsletter?</p> <p>16    A.    No.</p> <p>17    Q.    I'd like to direct your</p> <p>18    attention to the article on the first page</p> <p>19    entitled, "Should We Be Concerned?" The</p> <p>20    first paragraph of that article states,</p> <p>21    "After having seen a profitable industry for</p> <p>22    at least 20 months should we now be concerned</p> <p>23    with recent declines in the egg market quote?</p> <p>24    An Urner Barry Midwest Large quote that</p> <p>25    peaked at \$1.34 on March 11th had declined to</p>

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<p style="text-align: right;">Page 66</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     89 cents by April 15th. Aren't we getting</p> <p>3     awfully close to the cost of production?</p> <p>4     Have you looked at your costs recently? Are</p> <p>5     your older hens still profitable? Some</p> <p>6     believe that the costs of production may be</p> <p>7     as much as 10 cents per dozen higher than it</p> <p>8     was a year ago."</p> <p>9     Did I read that correctly?</p> <p>10    A.   That's what it reads.</p> <p>11    Q.   Towards the bottom of the page</p> <p>12    it says, "What can you do to correct this</p> <p>13    downward slide in egg prices? The tools are</p> <p>14    there to make changes that could very quickly</p> <p>15    impact the supply side of the business. They</p> <p>16    are:</p> <p>17        "1. Dispose of old flocks 4</p> <p>18    weeks earlier than has been done in the past</p> <p>19    20 months.</p> <p>20        "2. Return to your normal molt</p> <p>21    schedule that was used prior to the past</p> <p>22    20 months.</p> <p>23        "If the industry just makes a</p> <p>24    few minor adjustments they can assure</p> <p>25    themselves of many more months of profits."</p>	<p style="text-align: right;">Page 68</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     Q.   Fair enough. If all of the UEP</p> <p>3     members disposed of their laying flocks</p> <p>4     early, would production go down in the</p> <p>5     industry?</p> <p>6     MR. BARNES: Object to the form.</p> <p>7     THE WITNESS: If everybody</p> <p>8     killed all their chickens tomorrow,</p> <p>9     production would go down.</p> <p>10    BY MR. ALLEN:</p> <p>11    Q.   Is a laying flocks egg</p> <p>12    production reduced when it is molting?</p> <p>13    A.   Repeat that question again?</p> <p>14    Q.   Is a laying flock's egg</p> <p>15    production reduced while it's molting?</p> <p>16    A.   Yes. It goes up and then</p> <p>17    goes -- it goes down and then goes back up.</p> <p>18    Q.   So when the laying flock is</p> <p>19    molting, it's not producing eggs. Correct?</p> <p>20    A.   Correct.</p> <p>21    Q.   But egg producers molt their</p> <p>22    flocks to get increased egg production when</p> <p>23    the molting process is complete. Correct?</p> <p>24    A.   Egg producers typically will</p> <p>25    molt a flock to adjust when they get the eggs</p>
<p style="text-align: right;">Page 67</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     Did I read that correctly?</p> <p>3     A.   That what it reads.</p> <p>4     Q.   Isn't the UEP suggesting here</p> <p>5     that its members reduce egg production in</p> <p>6     order to correct a downward slide in egg</p> <p>7     prices?</p> <p>8     MR. BARNES: Object to the form.</p> <p>9     THE WITNESS: My understanding,</p> <p>10    since the beginning of time UEP has</p> <p>11    always suggested things for their</p> <p>12    members that, you know, what -- that</p> <p>13    you can do or not do to help or hurt</p> <p>14    production. They've always done that.</p> <p>15    BY MR. ALLEN:</p> <p>16    Q.   Have they always suggested what</p> <p>17    UEP members could do to affect the price of</p> <p>18    eggs?</p> <p>19    A.   They have always made</p> <p>20    suggestions. It's a voluntary organization.</p> <p>21    Anyone can do anything they want.</p> <p>22    Q.   Just to be clear, doesn't early</p> <p>23    disposal of a laying flock reduce production?</p> <p>24    A.   For that producer it would. If</p> <p>25    he killed them, the chickens don't lay eggs.</p>	<p style="text-align: right;">Page 69</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     out of a flock.</p> <p>3     Q.   How does that work?</p> <p>4     A.   You can take, if you got a</p> <p>5     flock of birds that's -- some people molt as</p> <p>6     early as 55 weeks, some people molt as late</p> <p>7     as 85 weeks. People will keep a flock of</p> <p>8     birds, some of them keep them and sell them</p> <p>9     about 110 weeks. Some sell at 122 weeks.</p> <p>10    We've kept flocks up to 130 weeks. Some</p> <p>11    people keep them and molt twice. They'll</p> <p>12    molt them at 110, then they'll keep them</p> <p>13    another 35 weeks, 145 to 155 weeks of age.</p> <p>14    There have been some people who will molt and</p> <p>15    go further. It all depends on the egg market</p> <p>16    and the projection of what they think the</p> <p>17    demand period is going to be.</p> <p>18    Q.   We're done with that one.</p> <p>19        - - -</p> <p>20        (Exhibit 4, 6/2/04 UEP United</p> <p>21    Voices newsletter, Bates UE0131851 -</p> <p>22    UE0131854, was marked for</p> <p>23    identification.)</p> <p>24        - - -</p> <p>25    BY MR. ALLEN:</p>

18 (Pages 66 - 69)

<p style="text-align: right;">Page 70</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     Q.   Mr. Rust, I've just handed you</p> <p>3 what's been marked as Exhibit 4 which is a</p> <p>4 June 2004 edition of UEP's newsletter Bates</p> <p>5 stamped UE0131851.</p> <p>6     MR. BARNES: This is misstapled</p> <p>7     apparently.</p> <p>8     MR. ALLEN: This is how it was</p> <p>9     produced. The Bates numbers are in</p> <p>10    order. The first page of the</p> <p>11    newsletter is on page 3 of the packet.</p> <p>12    MR. BARNES: Thank you. Gotcha.</p> <p>13    Look at page 3. Page 3, that's the</p> <p>14    first page.</p> <p>15    THE WITNESS: Okay.</p> <p>16 BY MR. ALLEN:</p> <p>17    Q.   Mr. Rust, I'd like to direct</p> <p>18 your attention to the article on page 3 of</p> <p>19 the packet which is Bates number 131853 which</p> <p>20 is page 1 of the June 2, 2004, United Voices</p> <p>21 newsletter. Do you see the article titled,</p> <p>22 "Are You Committed?"</p> <p>23    A.   Yes.</p> <p>24    Q.   That article states in the</p> <p>25 first paragraph, "With the rapid declining</p>	<p style="text-align: right;">Page 72</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     Q.   You'd be surprised.</p> <p>3     A.   You better know. See what your</p> <p>4 percentage is.</p> <p>5     Q.   Isn't the UEP, Mr. Rust,</p> <p>6 recommending that its members reduce egg</p> <p>7 production to address the rapid decline in</p> <p>8 egg prices?</p> <p>9     A.   That's what that would read it</p> <p>10 looks like to me.</p> <p>11    Q.   So you agree? That's a yes?</p> <p>12    MR. BARNES: Objection.</p> <p>13    THE WITNESS: I don't -- I said</p> <p>14 that -- I'm just saying that's what</p> <p>15 that says right there.</p> <p>16    MR. BARNES: Let him finish.</p> <p>17    THE WITNESS: I can't say I</p> <p>18 agree with it.</p> <p>19 BY MR. ALLEN:</p> <p>20    Q.   But you would say you agree</p> <p>21 this --</p> <p>22    A.   I agree that that's what it</p> <p>23 says there. I can read just like you can.</p> <p>24    Q.   We're done with that one.</p> <p>25           - - -</p>
<p style="text-align: right;">Page 71</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2 egg prices, it became very clear to most egg</p> <p>3 producers that supply was exceeding demand</p> <p>4 and that quick actions were needed to bring</p> <p>5 supply and demand more into balance. UEP's</p> <p>6 Marketing Committee recommended a voluntary</p> <p>7 program calling for flocks to be molted at 62</p> <p>8 weeks of age and spent hens disposed of by</p> <p>9 108 weeks of age and that this plan of action</p> <p>10 take place immediately and carry through</p> <p>11 until August 1, 2004."</p> <p>12     Did I read that correctly?</p> <p>13    A.   Yes.</p> <p>14    Q.   The article goes on to list 24</p> <p>15 UEP members who indicated they would</p> <p>16 participate in the program. Do you see that?</p> <p>17    A.   Yes. How many members were</p> <p>18 there at that time?</p> <p>19    Q.   Do you know how many UEP</p> <p>20 members there were?</p> <p>21    A.   I would assume maybe 100, I'm</p> <p>22 not sure.</p> <p>23    Q.   So you don't know?</p> <p>24    A.   Not exactly. You're an</p> <p>25 attorney, you probably know.</p>	<p style="text-align: right;">Page 73</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     (Exhibit 5, May 11-12, 2004 UEP</p> <p>3 Board of directors Meeting Minutes,</p> <p>4 Bates UE0153273 - UE0153276, was</p> <p>5 marked for identification.)</p> <p>6           - - -</p> <p>7 BY MR. ALLEN:</p> <p>8     Q.   I've just handed you what has</p> <p>9 been marked as Exhibit 5 which is a document</p> <p>10 titled, "United Egg Producers Board of</p> <p>11 Directors Meeting May 11-12, 2004,</p> <p>12 Washington, D.C.," Bates stamped UE0153273.</p> <p>13 Is that correct?</p> <p>14    A.   Yes.</p> <p>15    Q.   The top of the document says,</p> <p>16 "MINUTES." And then it says, "Call to Order:</p> <p>17 Chairman Roger Deffner called this meeting to</p> <p>18 order with the following being present."</p> <p>19 Under the members, your name is listed, is it</p> <p>20 not, Mr. Rust?</p> <p>21    A.   Yes, it is.</p> <p>22    Q.   On the second page of the</p> <p>23 document, the Marketing Committee appears to</p> <p>24 have submitted a motion to the UEP board to</p> <p>25 implement the supply reduction program we</p>

<p style="text-align: right;">Page 74</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     discussed in the previous exhibit.</p> <p>3         Do you see that?</p> <p>4         It says under the "Marketing</p> <p>5     Committee" section, "Committee Chairman Dolph</p> <p>6     Baker presented the committee report and</p> <p>7     identified pending problems for the financial</p> <p>8     stability of the industry if some minor</p> <p>9     supply adjustments were not made very</p> <p>10    quickly. He submitted the following motion."</p> <p>11         "It was moved by Baker and</p> <p>12    seconded by Fortin to recommend that the</p> <p>13    industry molt all flocks at 62 weeks and</p> <p>14    dispose of spent hens by 108 weeks and that</p> <p>15    this plan of action take place immediately</p> <p>16    and carry through until August 1, 2004."</p> <p>17    After that it says, "CARRIED."</p> <p>18         Is that correct?</p> <p>19     A.    That's what it says.</p> <p>20     Q.    Did you vote for this motion?</p> <p>21     A.    No.</p> <p>22     Q.    No. If you'll flip to the next</p> <p>23    page, Mr. Rust, under the section entitled,</p> <p>24    "Animal Welfare Committee," there was a</p> <p>25    motion that was submitted, and it says,</p>	<p style="text-align: right;">Page 76</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     A.    We can break up to 25 or</p> <p>3     30 percent of our eggs or we can grade</p> <p>4     90 percent.</p> <p>5     Q.    In the previous exhibit, Mr.</p> <p>6     Rust, Exhibit 4, the UEP Marketing Committee</p> <p>7     of which you were a member, correct --</p> <p>8     A.    Yes.</p> <p>9     Q.    -- recommended the molting at</p> <p>10    62 weeks of age and the spent hens being</p> <p>11    disposed of at 108 weeks of egg, you're say</p> <p>12    that Rose Acre did not dispose of the spent</p> <p>13    hens as recommended by the Marketing</p> <p>14    Committee?</p> <p>15    A.    Correct. We did not. We never</p> <p>16    did.</p> <p>17    Q.    I think we're done with that</p> <p>18    one for now.</p> <p>19         - - -</p> <p>20         (Exhibit 6, 10/04 United Voices</p> <p>21         newsletter, Bates RA0000363 -</p> <p>22         RA0000372, was marked for</p> <p>23         identification.)</p> <p>24         - - -</p> <p>25    BY MR. ALLEN:</p>
<p style="text-align: right;">Page 75</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     "MOTION CARRIED WITH THREE...VOTING IN</p> <p>3     OPPOSITION." Do you see that, it's about</p> <p>4     halfway down the page?</p> <p>5     A.    Yes.</p> <p>6     Q.    Was it the standard practice to</p> <p>7     note votes in opposition in the board</p> <p>8     minutes?</p> <p>9     A.    I don't -- what minutes I have</p> <p>10    seen through these things here don't seem to</p> <p>11    be, because I voted no against all molting</p> <p>12    and early sellout things because our company</p> <p>13    didn't do that, and I'm not going to sit</p> <p>14    there and lie to producers and say we're</p> <p>15    doing this and then not do it.</p> <p>16    Q.    So you didn't -- did you</p> <p>17    participate in the recommendations of the</p> <p>18    previous exhibit with respect to early</p> <p>19    molting and --</p> <p>20    A.    No, we never did.</p> <p>21    Q.    Never did?</p> <p>22    A.    We're an egg breaking company</p> <p>23    and a grading company. We're what they call</p> <p>24    a switch hitter.</p> <p>25    Q.    Okay.</p>	<p style="text-align: right;">Page 77</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     Q.    I've just handed you what has</p> <p>3     been marked as Exhibit 6 which is an</p> <p>4     October 2004 UEP newsletter, Bates stamped</p> <p>5     RA0000363 through 72. Is that correct?</p> <p>6     A.    Yes.</p> <p>7     Q.    The article on the second page</p> <p>8     is titled, "Largest Attendance Ever For UEP</p> <p>9     Meeting."</p> <p>10         Do you see that?</p> <p>11    A.    Yes.</p> <p>12    Q.    Towards the bottom of the page</p> <p>13    there's a sentence that says, "The issue on</p> <p>14    almost everyone's mind was the industry's</p> <p>15    current economic conditions."</p> <p>16         Do you see that?</p> <p>17    A.    Yes.</p> <p>18    Q.    On the next page, across the</p> <p>19    top, that article goes on to say, "A review</p> <p>20    of the industry's current and future</p> <p>21    statistics confirmed the fact that the</p> <p>22    industry has and is continuing to maintain a</p> <p>23    flock size beyond what is acceptable for</p> <p>24    profitable prices. The Board approved the</p> <p>25    following plan of action. Hens currently</p>

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<p style="text-align: right;">Page 78</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2 scheduled for disposal between December 1,</p> <p>3 2004 and July 1, 2005 must be disposed of</p> <p>4 four...weeks early or reduce your flock size</p> <p>5 by 5%."</p> <p>6         Did I read that correctly?</p> <p>7     A.    Yes.</p> <p>8     Q.    Isn't it fair to say that the</p> <p>9 UEP in this article was recommending that its</p> <p>10 members reduce their flock sizes to increase</p> <p>11 egg prices?</p> <p>12         MR. BARNES: Object to the form.</p> <p>13         THE WITNESS: It would be fair</p> <p>14 to say that's what they're</p> <p>15 recommending to a voluntary</p> <p>16 organization to farmers that do what</p> <p>17 they want to do.</p> <p>18 BY MR. ALLEN:</p> <p>19     Q.    This was an action by the UEP</p> <p>20 board. Correct?</p> <p>21     A.    Yes.</p> <p>22     Q.    Did you vote for that supply</p> <p>23 reduction?</p> <p>24     A.    No.</p> <p>25     Q.    Did Rose Acre implement the</p>	<p style="text-align: right;">Page 80</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2 position in the UEP was in 2004?</p> <p>3     A.    I'm not sure at that time, I</p> <p>4 don't remember if that's when he was the head</p> <p>5 of it or just the second guy in charge. I'm</p> <p>6 not sure. There is a time period when a guy</p> <p>7 by the name of Al Pope was in charge and then</p> <p>8 Gene was in charge. I don't recall the dates</p> <p>9 who changed when.</p> <p>10     Q.    Do you know whether he was an</p> <p>11 officer in the UEP?</p> <p>12     A.    I assume he would have been.</p> <p>13     Q.    If you'll turn to the second</p> <p>14 page of the newsletter. Towards the top it</p> <p>15 says, "There is no question that the nation's</p> <p>16 flock size is increasing to alarming numbers</p> <p>17 and if adjustments are not made, the industry</p> <p>18 could face extremely poor prices in 2005."</p> <p>19         It goes on to say in the fourth</p> <p>20 paragraph, "With the increasing flock size we</p> <p>21 were developing a negative attitude about the</p> <p>22 current and future market prices. We can</p> <p>23 change both the direction of the supply</p> <p>24 problems and our attitudes about egg prices</p> <p>25 by making adjustments to our flock size."</p>
<p style="text-align: right;">Page 79</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2 plan as approved by the board?</p> <p>3     A.    No.</p> <p>4         MR. BARNES: That was 6.</p> <p>5         MR. ALLEN: That was 6.</p> <p>6         - - -</p> <p>7         (Exhibit 7, 11/04 United Voices</p> <p>8 newsletter, Bates UE0246077 -</p> <p>9 UE0246080, was marked for</p> <p>10 identification.)</p> <p>11         - - -</p> <p>12 BY MR. ALLEN:</p> <p>13     Q.    Mr. Rust, I've just handed you</p> <p>14 what has been marked as Exhibit 7 which is a</p> <p>15 November 2004 edition of the UEP's</p> <p>16 newsletter, Bates stamped UE0246077 through</p> <p>17 808. I'm sorry, through 80 -- one more time,</p> <p>18 through 080. The article on the first page</p> <p>19 is titled, "What Do The Numbers Tell Us?"</p> <p>20         Do you see that?</p> <p>21     A.    Yes.</p> <p>22     Q.    It's described as an editorial</p> <p>23 by Gene Gregory. Is that correct?</p> <p>24     A.    Yes.</p> <p>25     Q.    Do you know what Gene Gregory's</p>	<p style="text-align: right;">Page 81</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2         Do you understand this to mean</p> <p>3 that the UEP is suggesting that egg producers</p> <p>4 reduce its -- their flock sizes?</p> <p>5         MR. BARNES: Object to the form.</p> <p>6         You forgot -- you cherry picked</p> <p>7 language from the document. The</p> <p>8 paragraph before the one you just read</p> <p>9 says it is Mr. Gregory's opinion. I</p> <p>10 don't think that necessarily means</p> <p>11 it's the opinion of the organization.</p> <p>12 BY MR. ALLEN:</p> <p>13     Q.    Is that what you understand</p> <p>14 this document to mean?</p> <p>15     A.    I understand it to say what it</p> <p>16 reads if you read it.</p> <p>17     Q.    Do you agree that it has never</p> <p>18 been good business to produce a supply of</p> <p>19 shell eggs greater than the market demands at</p> <p>20 profitable prices?</p> <p>21     A.    It's a very good business to</p> <p>22 produce more than the demand. That's how --</p> <p>23 the only way you weed out the weak,</p> <p>24 inefficient competitors.</p> <p>25     Q.    So is that what Rose Acre would</p>

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2 do, did you try to produce more --

3     A.   We try to produce more eggs all

4 the time.

5     Q.   Did you do that when it was

6 unprofitable?

7     A.   Yes.

8     Q.   So you -- did you do that

9 intentionally to lose money?

10    A.   Well, we -- there's lots of

11 times that we would know we're going to lose

12 money for a time period. That's just part of

13 the business. Every year, if you look at the

14 egg market, you study the egg market and an

15 attorney, you should know this if you're

16 suing us, the market goes up and down, that

17 goes by the demand. There's time periods of

18 the year you can't get people to buy eggs.

19 The chickens lay more eggs in the spring of

20 the year per chicken than they do in the fall

21 of the year or the winter. In the spring of

22 the year, that chicken is -- every bird lays

23 eggs in the spring. Every bird in the U.S.

24 is going to try to lay an egg. You get

25 surpluses of eggs then. The egg market goes

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1     MARCUS RUST - HIGHLY CONFIDENTIAL

2 down. We always -- when you have a breeder

3 farm and a hatchery, we never threw any

4 chicks away, we constantly increased

5 production through all those years. We

6 almost went broke once. Our banks were

7 very -- we had to have banker meetings to get

8 more money.

9     Q.   Do you agree that -- do you

10 agree with Mr. Gregory's statement that

11 selling flocks early or reducing flock size

12 as an industry will increase prices?

13       MS. ANDERSON: Object to the

14 form of the question. Misstating the

15 document.

16       THE WITNESS: Read the question

17 again?

18 BY MR. ALLEN:

19     Q.   So in that paragraph I just

20 read, Mr. Gregory opines in an article that

21 is described as an editorial, by selling

22 flocks early or reducing our flock size

23 prices will improve and so will attitudes --

24 I'm sorry, so will our attitudes.

25       Do you agree with that

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1     MARCUS RUST - HIGHLY CONFIDENTIAL

2 statement?

3     A.   No.

4     Q.   No? Why not?

5     A.   Because every time they ever

6 made a suggestion, producers still went out

7 and done what they wanted to do. It's like

8 if you look back at the one where they had

9 the list, I think at the bottom of the page

10 it said only 29 percent of the producers

11 agreed to -- or sent in their intentions what

12 they was going to do. Chicken farmers are a

13 very independent bunch, we're very

14 competitive and we all go do what we're going

15 to do, what's best for our company.

16     Q.   But this article says this is

17 an article addressed to all UEP members.

18 Correct?

19     A.   Yes.

20     Q.   And so he is suggesting that by

21 selling flocks early or reducing our flock

22 size, all UEP members, prices will improve

23 and so will our attitudes. So do you agree

24 with his suggestion that if UEP members got

25 together and reduced flock sizes, that prices

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2 would improve?

3       MR. BARNES: Objection.

4       MS. ANDERSON: Objection.

5       MR. DAVIS: Objection.

6       Misstates the document.

7       MR. BARNES: He also answered

8 it. It's been asked and answered.

9       THE WITNESS: Repeat your

10 question.

11 BY MR. ALLEN:

12     Q.   Do you agree with Mr. Gregory's

13 statement that "By selling flocks early or

14 reducing our flock size, prices will improve

15 and so will our attitude"?

16     A.   I have never agreed with Mr.

17 Gregory's statements.

18       - - -

19       (Exhibit 8, 11/04 United Voices

20 newsletter, Bates UE0368631 -

21 UE0368636, was marked for

22 identification.)

23       - - -

24 BY MR. ALLEN:

25     Q.   Mr. Rust, I've just handed you

<p style="text-align: right;">Page 86</p> <p>1      MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2      what's been marked as Exhibit 8 which is a</p> <p>3      November 2004 UEP newsletter, Bates stamped</p> <p>4      UE0368631 through 36. The article on the</p> <p>5      first page is titled, "Egg Industry 'Economic</p> <p>6      Summit."</p> <p>7              Do you see that?</p> <p>8      A.    Yes.</p> <p>9      Q.    The first paragraph of that</p> <p>10     article states, "In the past, UEP's Marketing</p> <p>11     Committee has reviewed industry statistics</p> <p>12     and advised all UEP members when it appeared</p> <p>13     that supply was exceeding demand. With</p> <p>14     forecast of an increasing flock size at a</p> <p>15     time when many believed demand has declined</p> <p>16     prompted UEP to call for an 'economic summit'</p> <p>17     on November 16th in Atlanta."</p> <p>18              Did I read that correctly?</p> <p>19     A.    That's what it says.</p> <p>20     Q.    The UEP Marketing Committee is</p> <p>21     comprised of UEP members. Right?</p> <p>22     A.    Yes.</p> <p>23     Q.    Were you ever on the UEP</p> <p>24     Marketing Committee?</p> <p>25     A.    I was on the committee for a</p>	<p style="text-align: right;">Page 88</p> <p>1      MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2      I think the documents show that.</p> <p>3      Q.    So you're agreeing that the UEP</p> <p>4      Marketing Committee would specifically tell</p> <p>5      UEP members when supply was exceeding demand?</p> <p>6      A.    No.</p> <p>7              MR. BARNES: Objection. Asked</p> <p>8              and answered.</p> <p>9      BY MR. ALLEN:</p> <p>10     Q.    No?</p> <p>11              MR. BARNES: Asked and answered.</p> <p>12     BY MR. ALLEN:</p> <p>13     Q.    So is there -- so this is</p> <p>14     incorrect?</p> <p>15              MR. BARNES: Objection. The</p> <p>16     documents speaks for itself.</p> <p>17              THE WITNESS: You stated that</p> <p>18     the members tell UE -- the committee</p> <p>19     tells UEP members.</p> <p>20     BY MR. ALLEN:</p> <p>21     Q.    Yes.</p> <p>22     A.    No, we never told members</p> <p>23     anything.</p> <p>24     Q.    Because the first sentence of</p> <p>25     the article says, "In the past, UEP's</p>
<p style="text-align: right;">Page 87</p> <p>1      MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2      good part of the time that they had it.</p> <p>3      Q.    Do you know when?</p> <p>4      A.    From when we joined UEP.</p> <p>5      Q.    Is it true that the UEP</p> <p>6      Marketing Committee advised UEP members when</p> <p>7      it appeared that supply was exceeding demand?</p> <p>8      A.    They always had these numbers</p> <p>9      and stuff they published and passed out to</p> <p>10     people that they acquired from USDA.</p> <p>11     Q.    So when supply was exceeding</p> <p>12     demand, are you saying that the UEP Marketing</p> <p>13     Committee would let UEP members know?</p> <p>14     A.    Every time that there was a</p> <p>15     meeting, they always had all these charts and</p> <p>16     stuff of the so-called nation's flock, the</p> <p>17     nation's hatch. They always had that</p> <p>18     information.</p> <p>19     Q.    But did they specifically</p> <p>20     notify UEP members when supply -- when the</p> <p>21     supply of eggs was exceeding the demand of</p> <p>22     eggs?</p> <p>23     A.    I think they always would give</p> <p>24     information out to their members of what</p> <p>25     they -- what their projections were showing.</p>	<p style="text-align: right;">Page 89</p> <p>1      MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2      Marketing Committee has reviewed industry</p> <p>3      statistics and advised all UEP members when</p> <p>4      it appeared that supply was exceeding</p> <p>5      demand."</p> <p>6              So is it your testimony here</p> <p>7      today that based on your experience on the</p> <p>8      UEP Marketing Committee, that that was not</p> <p>9      the case?</p> <p>10     A.    I never went out -- as a member</p> <p>11     of the Marketing Committee, I never went out</p> <p>12     and told any other UEP members stuff from</p> <p>13     that meeting.</p> <p>14     Q.    So you're saying that this is</p> <p>15     incorrect?</p> <p>16              MR. BARNES: Object to the form.</p> <p>17     BY MR. ALLEN:</p> <p>18     Q.    Is that right?</p> <p>19     A.    Repeat your question again.</p> <p>20     Q.    Are you saying that the first</p> <p>21     sentence of this article is incorrect, that</p> <p>22     "In the past, UEP's Marketing Committee has</p> <p>23     reviewed industry statistics and advised all</p> <p>24     UEP members when it appeared that supply was</p> <p>25     exceeding demand"?</p>

23 (Pages 86 - 89)



<p style="text-align: right;">Page 90</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2           MR. BARNES: Same objection.</p> <p>3           THE WITNESS: I would say that</p> <p>4           was incorrect.</p> <p>5 BY MR. ALLEN:</p> <p>6     Q.    Based on your experience on the</p> <p>7 UEP Marketing Committee?</p> <p>8     A.    As a member, I never went</p> <p>9 out -- of that committee, I never went out</p> <p>10 and told people anything. UEP might have,</p> <p>11 but me as a member, never.</p> <p>12    Q.    If you'll turn to the second</p> <p>13 page of the newsletter, Mr. Rust. You'll see</p> <p>14 that the article continues, it says, "The</p> <p>15 'economic summit' exposed a bleak picture of</p> <p>16 the supply side of the business. With</p> <p>17 pullets currently in growing houses, we now</p> <p>18 can predict a layer flock of 13 million more</p> <p>19 hens in April 2005 than at the same month of</p> <p>20 2004 if we do not find ways to dispose of</p> <p>21 older hens and increase the cull rate. If</p> <p>22 the hatch of 2005 is the same as in 2004 and</p> <p>23 we continue the hen disposal (cull) rate of</p> <p>24 2004 then we will have a nation's flock size</p> <p>25 of more than 300 million hens by the end of</p>	<p style="text-align: right;">Page 92</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2           Did I read that right?</p> <p>3           MR. BARNES: Objection. The</p> <p>4           document speaks for itself.</p> <p>5           THE WITNESS: Are you -- what</p> <p>6           are you asking? Did you read it</p> <p>7           right?</p> <p>8 BY MR. ALLEN:</p> <p>9     Q.    Right.</p> <p>10    A.    I didn't follow you line for</p> <p>11 line and dot for dot.</p> <p>12    Q.    I didn't misquote.</p> <p>13    A.    There are a lot of ifs and a</p> <p>14 lot of dependings. I happened to get hung up</p> <p>15 on the serves no purpose to blame. We had a</p> <p>16 lot of people that was mad at us because we</p> <p>17 were building new chicken houses, was adding</p> <p>18 three million bird complexes in North</p> <p>19 Carolina. People didn't like that.</p> <p>20    Q.    Mr. Rust, if you look at the</p> <p>21 two options, aren't those options intended to</p> <p>22 reduce the supply of eggs?</p> <p>23    A.    That's what some of their</p> <p>24 suggestions were, yes.</p> <p>25    Q.    These two specific options</p>
<p style="text-align: right;">Page 91</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2 2005 or an increase of about 25 million more</p> <p>3 hens than during the period of the industry's</p> <p>4 highest egg returns of 2003 and 2004.</p> <p>5 Depending upon whether the industry reacts to</p> <p>6 the pending problems or not, egg prices were</p> <p>7 projected to be from 10 to 27 cents per dozen</p> <p>8 below the annual average of 2003."</p> <p>9           Recognizing that it serves no</p> <p>10 purpose to place blame on someone, many</p> <p>11 attendees elected to be part of the solution.</p> <p>12 One of those attending -- excuse me, of those</p> <p>13 attending, producers dedicated primarily to</p> <p>14 shell egg markets and with approximate 100</p> <p>15 million hens made their intentions known by</p> <p>16 stating that they would implement one or both</p> <p>17 of the following recommendations.</p> <p>18           "Option #1 To dispose of hens</p> <p>19 that are currently scheduled for disposal</p> <p>20 between January 1 and April 30, 2005</p> <p>21 four...weeks earlier than previously</p> <p>22 scheduled.</p> <p>23           "Option #2 To reduce their</p> <p>24 December 1, 2004 flock size by 5% between the</p> <p>25 dates of January 1 through April 30, 2005."</p>	<p style="text-align: right;">Page 93</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2 mentioned in the newsletter, though?</p> <p>3     A.    Yeah. And then I see here it</p> <p>4 says only -- how many companies out of how</p> <p>5 many did what, what was their intentions.</p> <p>6     Q.    So you agree, though, that</p> <p>7 those two options are intended to reduce the</p> <p>8 supply of eggs?</p> <p>9     A.    They were suggestions for</p> <p>10 producers to do something if they chose to.</p> <p>11 It depends on what their economic needs or</p> <p>12 means were.</p> <p>13    Q.    Did Rose Acre implement one of</p> <p>14 these two options?</p> <p>15    A.    No. Like I told you, if you</p> <p>16 read up here, it says, recognizing that it</p> <p>17 serves no purpose to put blame on someone.</p> <p>18 You have to understand there's a lot of</p> <p>19 producers there that hated our guts because</p> <p>20 we was out building new chicken houses all</p> <p>21 the time. They sued us in prior years.</p> <p>22    Q.    This article seems to suggests</p> <p>23 that the supply of eggs is too big for</p> <p>24 profitable prices?</p> <p>25    A.    Also if you read right there,</p>

24 (Pages 90 - 93)

<p style="text-align: right;">Page 94</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     it says, "Recognizing it serves no purpose to</p> <p>3     place blame on someone..."</p> <p>4     Q.   Mr. Rust --</p> <p>5     A.   They're referring to me truly.</p> <p>6     Q.   If you would, Mr. Rust, please</p> <p>7     let me finish my question. I will not talk</p> <p>8     over you and please don't talk over me.</p> <p>9     A.   You're getting under my skin.</p> <p>10    Q.   This article seems to me, Mr.</p> <p>11    Rust, to suggest that the supply of eggs is</p> <p>12    too high for profitable egg prices. And then</p> <p>13    it recommends to UEP members that they</p> <p>14    dispose of their hens and reduce their flock</p> <p>15    sizes in order to reduce the supply and</p> <p>16    increase the prices. Do you agree with that?</p> <p>17       MR. BARNES: Object to form.</p> <p>18       THE WITNESS: I don't agree with</p> <p>19    it. What I'm -- what I say is UEP</p> <p>20    since the beginning of time has been a</p> <p>21    Capper-Volstead co-op that has always</p> <p>22    gave suggestions to its members that</p> <p>23    the members could voluntarily do what</p> <p>24    they want to do. We as a member have</p> <p>25    always chose to go out and build more</p>	<p style="text-align: right;">Page 96</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2         MR. MONICA: Okay.</p> <p>3         - - -</p> <p>4         (Exhibit 9, 2/05 United Voices</p> <p>5         newsletter, Bates UE0214033 -</p> <p>6         UE0214036, was marked for</p> <p>7         identification.)</p> <p>8         - - -</p> <p>9    BY MR. ALLEN:</p> <p>10   Q.   Mr. Rust, I've just handed you</p> <p>11   what's been marked as Exhibit 9, which is a</p> <p>12   February 2005 UEP newsletter, Bates stamped</p> <p>13   UE0214033.</p> <p>14   A.   Okay.</p> <p>15   Q.   The second page of that</p> <p>16   document is titled, "Chairman's Comments."</p> <p>17         Do you see that?</p> <p>18   A.   Yep.</p> <p>19   Q.   That article says, "UEP</p> <p>20   Chairman Roger Deffner welcomed the large</p> <p>21   attendance at UEP's Board of Directors</p> <p>22   meeting in Atlanta on January 25th and among</p> <p>23   his opening comments were the following:</p> <p>24         "It was just a year ago that we</p> <p>25   met in this very hotel and we were so full of</p>
<p style="text-align: right;">Page 95</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     chicken houses and add to our capacity</p> <p>3     of our flocks. That's what -- that's</p> <p>4     how we make money. We want to grow</p> <p>5     our farm.</p> <p>6   BY MR. ALLEN:</p> <p>7   Q.   You were on the board of</p> <p>8   directors --</p> <p>9   A.   Yes.</p> <p>10   Q.   -- when these suggestions were</p> <p>11   provided to UEP members. Is that correct?</p> <p>12   A.   Correct.</p> <p>13   Q.   You didn't object to this</p> <p>14   newsletter. Is that correct?</p> <p>15       MR. BARNES: Object to form.</p> <p>16       THE WITNESS: I'm only one voice</p> <p>17   out of however many members there are.</p> <p>18   BY MR. ALLEN:</p> <p>19   Q.   Mr. Rust, we've been going for</p> <p>20   a while, if you need a break at any time, let</p> <p>21   me know.</p> <p>22   A.   I'm good.</p> <p>23       MR. MONICA: Is that a yes, are</p> <p>24   you good?</p> <p>25       THE WITNESS: I'm good.</p>	<p style="text-align: right;">Page 97</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2   optimism. All indicators were that we could</p> <p>3   sustain \$1.00 plus eggs for an extended</p> <p>4   period and the price structures for the next</p> <p>5   18 months. (We took care of that). The</p> <p>6   market came full circle with prices from</p> <p>7   \$1.35 to 59 cents. We don't have to accept</p> <p>8   low prices and we can have a good 2005 if we</p> <p>9   just make a few changes and work together."</p> <p>10       What's your understanding of</p> <p>11   that statement, we can just make a few</p> <p>12   changes and work together?</p> <p>13   A.   Well, this statement proves</p> <p>14   what has always happened at United Egg</p> <p>15   Producers' meetings, they all get together,</p> <p>16   listen to all these suggestions that Mr.</p> <p>17   Gregory and the USDA and the people would put</p> <p>18   together, the producers still went out and</p> <p>19   done what was economically best for</p> <p>20   themselves. They obviously never followed</p> <p>21   the suggestions. They went out like we did,</p> <p>22   built more chicken houses, overproduced,</p> <p>23   caused an egg market supply to become too</p> <p>24   great, the Atkins Diet fad probably wore off,</p> <p>25   people weren't buying like they were, weather</p>

25 (Pages 94 - 97)

<p style="text-align: right;">Page 98</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     might have been perfect for chicken</p> <p>3     production, egg numbers might have been good</p> <p>4     from the flocks at that time, flocks of eggs</p> <p>5     got laid, price went down, we had kind of an</p> <p>6     economic meltdown. You know, low prices,</p> <p>7     pure low prices. When producers run out of</p> <p>8     money finally, they will quit feeding</p> <p>9     chickens, birds get going. It just proves</p> <p>10    that the market works.</p> <p>11    Q.    So when he says, "We don't have</p> <p>12    to accept low prices and we can have a good</p> <p>13    2005 if we just make a few changes and work</p> <p>14    together," do you agree that he is suggesting</p> <p>15    that UEP members reduce the supply of eggs in</p> <p>16    order to increase prices?</p> <p>17    MR. BARNES: Object to the form</p> <p>18    of the question.</p> <p>19    THE WITNESS: He may have been</p> <p>20    suggesting that, but that's never ever</p> <p>21    what took place.</p> <p>22    BY MR. ALLEN:</p> <p>23    Q.    Were you at this meeting, Mr.</p> <p>24    Rust?</p> <p>25    A.    Yes.</p>	<p style="text-align: right;">Page 100</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     time you want to take a break, please</p> <p>3     just let us know.</p> <p>4     VIDEOGRAPHER: This is the end</p> <p>5     of tape one of the videotape</p> <p>6     deposition of Marcus Rust. We're off</p> <p>7     the record at 8:53.</p> <p>8     - - -</p> <p>9     (A recess was taken.)</p> <p>10    - - -</p> <p>11    VIDEOGRAPHER: Here begins tape</p> <p>12    two in the videotape deposition of</p> <p>13    Marcus Rust. We are back on the</p> <p>14    record at 9:08.</p> <p>15    BY MR. ALLEN:</p> <p>16    Q.    Mr. Rust, I'm going to hand you</p> <p>17    what's been marked as Exhibit 10.</p> <p>18    - - -</p> <p>19    (Exhibit 10, 1/23/06 UEP</p> <p>20    Marketing Committee meeting minutes,</p> <p>21    Bates UE0153055 &amp; UE0153056, was</p> <p>22    marked for identification.)</p> <p>23    - - -</p> <p>24    BY MR. ALLEN:</p> <p>25    Q.    Exhibit 10 is the minutes of a</p>
<p style="text-align: right;">Page 99</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     Q.    Did you voice the objection to</p> <p>3     his suggestion?</p> <p>4     A.    I stood up at several meetings</p> <p>5     and made my opinions voiced on what I thought</p> <p>6     of some of the so-called early sells, molts.</p> <p>7     Q.    Do you remember this speech by</p> <p>8     any chance?</p> <p>9     A.    No.</p> <p>10    Q.    No? Do you remember talking to</p> <p>11    anyone about his suggestion that the UEP</p> <p>12    members reduce supply and work together?</p> <p>13    A.    I have no recollection from</p> <p>14    doing something from that meeting.</p> <p>15    Q.    Did you review this specific</p> <p>16    article when you were preparing for your</p> <p>17    deposition?</p> <p>18    A.    I don't -- I've looked at so</p> <p>19    many of these papers that these guys have</p> <p>20    given me, I don't have a recollection of what</p> <p>21    I looked at two minutes ago, let alone this</p> <p>22    second.</p> <p>23    MR. ALLEN: I actually need to</p> <p>24    take a break.</p> <p>25    MR. BARNES: That's fine. Any</p>	<p style="text-align: right;">Page 101</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     UEP Marketing Committee meeting held</p> <p>3     January 23, 2006, in Atlanta, Georgia. And</p> <p>4     it's Bates stamped UE0153055 through 56.</p> <p>5     You were on the board of</p> <p>6     directors of UEP in 2006. Correct?</p> <p>7     A.    Yes.</p> <p>8     Q.    And this document shows that</p> <p>9     you were also a member of the UEP Marketing</p> <p>10    Committee and that you were present at this</p> <p>11    January 23, 2006, meeting in Atlanta. Right?</p> <p>12    A.    Yes.</p> <p>13    Q.    Did you see this document, Mr.</p> <p>14    Rust, when you were preparing for your</p> <p>15    deposition?</p> <p>16    A.    I don't recall right offhand.</p> <p>17    Q.    On the second page of the</p> <p>18    document, there's a section titled, "Managing</p> <p>19    Supply - Demand."</p> <p>20    Do you see that?</p> <p>21    A.    Yes.</p> <p>22    Q.    That says, "Gene Gregory</p> <p>23    presented statistical reports showing that</p> <p>24    the industry produces more eggs during the</p> <p>25    second 4 month period of each year than</p>

<p style="text-align: right;">Page 102</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     during the first 4 month period and yet egg</p> <p>3     prices are lower during the second 4 month</p> <p>4     period. He called on members to look at</p> <p>5     their own records in an attempt to reduce the</p> <p>6     supply during the May through August months</p> <p>7     to meet demand."</p> <p>8             Do you see that?</p> <p>9     A.    Yes.</p> <p>10    Q.    Did I read that correctly?</p> <p>11    A.    Yes.</p> <p>12    Q.    Did you voice disagreement with</p> <p>13    Mr. Gregory's recommendation to reduce the</p> <p>14    egg supply?</p> <p>15    A.    They know what our stance has</p> <p>16    always been.</p> <p>17    Q.    Did you voice disagreement at</p> <p>18    this meeting?</p> <p>19    A.    I have no recollection of</p> <p>20    whether I voiced at this meeting or which</p> <p>21    meeting I did voice at.</p> <p>22    Q.    Do you know whether anyone else</p> <p>23    voiced disagreement at the meeting?</p> <p>24    A.    Given time, there were other</p> <p>25    people that had the same position that we</p>	<p style="text-align: right;">Page 104</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     Q.    I'm sorry, Exhibit 11.</p> <p>3     A.    I thought you called me Mr.</p> <p>4     Gregory.</p> <p>5     Q.    I'm sorry. Did I?</p> <p>6             COURT REPORTER: Yes.</p> <p>7     BY MR. ALLEN:</p> <p>8     Q.    I apologize.</p> <p>9             MR. BARNES: That's all right.</p> <p>10            MR. MONICA: Those are fighting</p> <p>11    words.</p> <p>12    BY MR. ALLEN:</p> <p>13    Q.    Exhibit 11 is the minutes of a</p> <p>14    conference call by the UEP Marketing</p> <p>15    Committee on March 31, 2006, Bates stamped</p> <p>16    UE0153041. Is that correct?</p> <p>17    A.    Yes.</p> <p>18    Q.    The top of the minutes show</p> <p>19    that you were present for this meeting.</p> <p>20    Right?</p> <p>21    A.    It was a call.</p> <p>22    Q.    I'm sorry. It's a conference</p> <p>23    call.</p> <p>24    A.    Correct.</p> <p>25    Q.    The minutes state, "Gregory</p>
<p style="text-align: right;">Page 103</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     did. There were other people on that</p> <p>3     committee.</p> <p>4     Q.    At this specific meeting?</p> <p>5     A.    I don't have recollection of</p> <p>6     who said what.</p> <p>7     Q.    You don't remember.</p> <p>8             So did Rose Acre reduce its</p> <p>9     supply in accordance with Mr. Gregory's</p> <p>10    suggestion?</p> <p>11    A.    We never reduced our supply</p> <p>12    according to any UEP suggestion.</p> <p>13             - - -</p> <p>14             (Exhibit 11, 3/31/06 UEP</p> <p>15     Marketing Committee Conference call</p> <p>16     minutes, Bates UE0153041 &amp; UE0153041,</p> <p>17     was marked for identification.)</p> <p>18             - - -</p> <p>19    BY MR. ALLEN:</p> <p>20    Q.    Mr. Gregory, I've handed you</p> <p>21    what's been marked as Exhibit 11 for purposes</p> <p>22    of this deposition.</p> <p>23    A.    You said what?</p> <p>24             MR. BARNES: 11.</p> <p>25    BY MR. ALLEN:</p>	<p style="text-align: right;">Page 105</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     opened the discussion by saying the purpose</p> <p>3     of the call was to report that the Animal</p> <p>4     Welfare Committee had recently rejected a</p> <p>5     resolution to speed up the phase-in schedule</p> <p>6     of the cage space allowance for fear that it</p> <p>7     might be viewed as using the program as a</p> <p>8     means to address supply demand problems. It</p> <p>9     was then determined that a conference call of</p> <p>10    the Marketing Committee should be conducted</p> <p>11    to consider actions that might improve the</p> <p>12    forecast of poor economic conditions.</p> <p>13             "Mooney read emails from Glen</p> <p>14    Hickman and Bob Randall expressing support</p> <p>15    for programs that would address the</p> <p>16    supply/demand problems."</p> <p>17             Did I read that correctly?</p> <p>18    A.    That's what you read, yes.</p> <p>19    Q.    Who are Glenn Hickman and Bob</p> <p>20    Randall?</p> <p>21    A.    Glenn Hickman is an egg</p> <p>22    producer in Arizona from Hickman's Family</p> <p>23    Farms.</p> <p>24    Q.    Do you remember who Bob Randall</p> <p>25    is?</p>

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<p style="text-align: right;">Page 106</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     A.    Bob Randall, I believe at that</p> <p>3     time he used to be with DeKalb Breeding</p> <p>4     Company. I think at that time he may have</p> <p>5     been working for Tampa Farm Services, but</p> <p>6     don't hold me to that.</p> <p>7     Q.    Were those companies members of</p> <p>8     the United Egg Producers?</p> <p>9     A.    I assume they were.</p> <p>10    Q.    What was the committee's</p> <p>11    reaction to Hickman's and Randall's e-mails</p> <p>12    suggesting that the UEP develop programs to</p> <p>13    address supply/demand problems?</p> <p>14    A.    I don't recall.</p> <p>15    Q.    No reaction that you remember?</p> <p>16    A.    No.</p> <p>17    Q.    The minutes go on to say,</p> <p>18    "Mooney reported that he felt we should</p> <p>19    recommend that the Animal Welfare Committee</p> <p>20    reconsider their position and move to the</p> <p>21    67 square inches per hen as quickly as</p> <p>22    possible. This raised objections from some."</p> <p>23        Did I read that correctly?</p> <p>24    A.    Yes.</p> <p>25    Q.    In that paragraph, isn't Mooney</p>	<p style="text-align: right;">Page 108</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     objected to it because I've stood up at</p> <p>3     several meetings and said no variance from</p> <p>4     the program from once it was started on the</p> <p>5     square inch reduction for the cage space of</p> <p>6     the birds.</p> <p>7     Q.    The minutes go on to say,</p> <p>8     "While objecting to any changes in the UEP</p> <p>9     Certified program, Seger suggested that the</p> <p>10    only answer is to move up the removal</p> <p>11    schedule of flocks a few weeks and leave the</p> <p>12    house empty for a period of time. He</p> <p>13    suggested that breakers very likely will not</p> <p>14    being buying surplus shell eggs until they</p> <p>15    are given to them because of the large dried</p> <p>16    eggs inventory."</p> <p>17        What do you think Seger meant</p> <p>18    when he said the only answer is to move up</p> <p>19    the removal schedule of flocks a few week and</p> <p>20    leave the house empty for a period of time?</p> <p>21    Answer to what?</p> <p>22        MR. BARNES: Objection to the</p> <p>23    form of the question. Compound, and</p> <p>24    the document speaks for itself.</p> <p>25        THE WITNESS: What are you</p>
<p style="text-align: right;">Page 107</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     referring to the extra cage space per hen</p> <p>3     that was part of the UEP's Animal Care</p> <p>4     Certified Program?</p> <p>5        MR. BARNES: Object to the form.</p> <p>6        THE WITNESS: I think so.</p> <p>7    BY MR. ALLEN:</p> <p>8     Q.    Do you remember what the</p> <p>9     objections were that are mentioned?</p> <p>10    A.    There was several people,</p> <p>11    including myself, I think at that one, I</p> <p>12    don't know if I even said anything at that</p> <p>13    one. Part of the problem I had whenever I do</p> <p>14    a call, my office is next or on top of our</p> <p>15    truck stop and they use impact wrenches out</p> <p>16    there. When they're changing truck tires and</p> <p>17    doing that kind of thing, I sit there on a --</p> <p>18    I have to put my phone on mute or it picks</p> <p>19    up -- I always use a speaker phone, and it</p> <p>20    picks up all that racket out in the shop. I</p> <p>21    don't remember if that is one of those I was</p> <p>22    on mute, but I remember there's several</p> <p>23    producers that are only in UEP for the Animal</p> <p>24    Welfare Program. And that was a -- if the</p> <p>25    issue wasn't objected to, I would have</p>	<p style="text-align: right;">Page 109</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     asking me again?</p> <p>3    BY MR. ALLEN:</p> <p>4     Q.    Sure. I'll rephrase that.</p> <p>5     Seger said that the only answer is to move up</p> <p>6     the removal schedule of flocks a few weeks.</p> <p>7     What did he mean when he said the only</p> <p>8     answer?</p> <p>9        MR. BARNES: Same objection.</p> <p>10    THE WITNESS: I have no idea</p> <p>11    what he actually meant by that.</p> <p>12   BY MR. ALLEN:</p> <p>13    Q.    Do you think that he was saying</p> <p>14    that the only answer to the supply problems</p> <p>15    that the egg industry was facing?</p> <p>16        MS. ANDERSON: Objection to form</p> <p>17    of the question.</p> <p>18        THE WITNESS: That may have been</p> <p>19    his opinion. I have no way of knowing</p> <p>20    what he meant.</p> <p>21   BY MR. ALLEN:</p> <p>22    Q.    What's your understanding of</p> <p>23    this as you sit here today? When you read</p> <p>24    this, do you read it to say that Seger is</p> <p>25    suggesting that egg producers should reduce</p>



<p style="text-align: right;">Page 110</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2 the supply of eggs in order to increase the</p> <p>3 prices?</p> <p>4     MR. BARNES: Object to the form.</p> <p>5     Compound.</p> <p>6     THE WITNESS: I would assume</p> <p>7     that's what he was meaning, I have no</p> <p>8     idea.</p> <p>9 BY MR. ALLEN:</p> <p>10    Q.   The minutes go on to say, "It</p> <p>11 was moved by Baker and seconded by Schimpf to</p> <p>12 recommend to the members a program calling</p> <p>13 for flocks to be molted six...weeks earlier</p> <p>14 than previously scheduled and to dispose of</p> <p>15 spent hens six...weeks earlier than previous</p> <p>16 scheduled.</p> <p>17     The motion passed unanimously.</p> <p>18     Did you vote for that motion?</p> <p>19    A.   No.</p> <p>20    Q.   No, you didn't?</p> <p>21    A.   No.</p> <p>22    Q.   Did you abstain from that vote?</p> <p>23    A.   I either would have abstained</p> <p>24 or I might have voted and not removed my mute</p> <p>25 button on my phone. I have no idea. We were</p>	<p style="text-align: right;">Page 112</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2 bar breaking plants, we always go to the</p> <p>3 fullest. We never -- what we don't want is</p> <p>4 empty space in the henhouse. There's a lot</p> <p>5 of producers here that had what they call</p> <p>6 contract farms. They had the option of</p> <p>7 leaving the farm empty. We didn't. It costs</p> <p>8 us money.</p> <p>9     Q.   So would Rose Acre -- I'm</p> <p>10 sorry. Go ahead.</p> <p>11    A.   A contract farm -- you have to</p> <p>12 understand, a contract farm is a farm where a</p> <p>13 producer goes out and contracts with farmers</p> <p>14 to put eggs in or chickens in to get eggs.</p> <p>15 They have the option of, okay, we can sell</p> <p>16 that flock, they want to sell it early, they</p> <p>17 don't have to make a contract payment. My</p> <p>18 cost to produce, Michaels' cost to produce,</p> <p>19 it doesn't change. The only thing we save is</p> <p>20 the cost of feed. That's our only variable</p> <p>21 cost. Everything else stays the same. So if</p> <p>22 we produce less pounds next week, our costs</p> <p>23 goes up. We don't want our cost to go up.</p> <p>24    Q.   Is feed a significant expense</p> <p>25 in the egg industry?</p>
<p style="text-align: right;">Page 111</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2 in the breaking and drying business. We</p> <p>3 always produced to the maximum we could and</p> <p>4 we always dried. That's a time of the year</p> <p>5 we're putting away dry product.</p> <p>6     Q.   Do you agree that the</p> <p>7 recommendation by the Marketing Committee to</p> <p>8 molt the flocks earlier than previously</p> <p>9 scheduled and dispose of spent hens would</p> <p>10 reduce egg production?</p> <p>11    A.   It may have for certain</p> <p>12 producers, you know, that we'd do that.</p> <p>13 There's a lot of producers that never have</p> <p>14 done any of the things that UEP suggested.</p> <p>15    Q.   Did -- I'm sorry.</p> <p>16    A.   Because a lot of us get --</p> <p>17 three, four different kind of producers. You</p> <p>18 have people that are in the drying and</p> <p>19 breaking business only. I mean, you know,</p> <p>20 Michael Foods, for instance, they're never</p> <p>21 going to sit there and kill chickens.</p> <p>22 They've got to have every egg from every bird</p> <p>23 that they put in the chicken house because</p> <p>24 they're selling pounds. If you have empty</p> <p>25 space, you're not selling pounds. We have</p>	<p style="text-align: right;">Page 113</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     A.   Yes.</p> <p>3     Q.   So when egg prices are bad, is</p> <p>4 Rose Acre Farms still producing as many eggs</p> <p>5 as it is can?</p> <p>6     A.   Yes, because the price of eggs</p> <p>7 never drops below the price of feed.</p> <p>8     Q.   But there are other costs,</p> <p>9 right, other than feed? What are the other</p> <p>10 big transactional or variable costs for egg</p> <p>11 producers?</p> <p>12    A.   A producer who doesn't have the</p> <p>13 option to break will have an extra cost of a</p> <p>14 carton and a case. Every other cost they</p> <p>15 have, the feed and the material that you</p> <p>16 package the stuff in is only two costs that</p> <p>17 go away if you sell the chicken early for the</p> <p>18 average shell egg producer. If you're in the</p> <p>19 breaking business, the only cost that goes</p> <p>20 away would be the cost of your feed. You</p> <p>21 still have the electric in the building, the</p> <p>22 lights are on, you wouldn't run as many fans,</p> <p>23 that's a half cent a dozen, though.</p> <p>24     - - -</p> <p>25     (Exhibit 12, 2/07 United Voices</p>

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1     MARCUS RUST - HIGHLY CONFIDENTIAL  
2     newsletter, Bates UE0133262 -  
3     UE0133265, was marked for  
4     identification.)  
5     - - -  
6     BY MR. ALLEN:  
7     Q.   Mr. Rust, I'm handing you  
8     what's been marked as Exhibit 12, which is a  
9     February 2007 UEP newsletter, Bates stamped  
10    UE0133262 through 65. Rose Acre was still a  
11    member of the UEP in 2007. Is that correct?  
12    A.   Correct.  
13    Q.   You were still on the board of  
14    directors. Correct?  
15    A.   Yes.  
16    Q.   Did you review this newsletter  
17    in preparation for your deposition?  
18    A.   I don't think this one.  
19    Q.   I'd like to direct your  
20    attention to the article on the second page  
21    of the newsletter titled, "The Egg Market."  
22    The first paragraph of that article states,  
23    "With producers having adjusted their egg  
24    supply in late December, unexpected increase  
25    demand, weather problems across many parts of

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1     MARCUS RUST - HIGHLY CONFIDENTIAL  
2     the country, and the USEM sizable shell egg  
3     export, egg prices have been extremely good  
4     between the period of November 1st through  
5     today's date. The Midwest Urner Barry Large  
6     quote averaged \$1.06 during the period and  
7     reached a near record price of \$1.36 during  
8     the January 29th week. Prices fell just  
9     short of the record price of \$1.37 in  
10    November 2003."  
11    Did I read that correctly?  
12    A.   Yes.  
13    Q.   On the next page, page 3 of the  
14    newsletter, Bates stamped UE0133264, the  
15    article goes on to state, the fourth  
16    paragraph down, "The best immediate answer to  
17    assure profitable prices is for the industry  
18    to show some restraint. Producing more eggs  
19    than the market demands at profitable prices  
20    is never good business and everyone should  
21    study their own personal supply/demand  
22    conditions and adjust accordingly."  
23    Did I read that correctly?  
24    A.   That's what it says.  
25    Q.   Do you agree that this article

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1     MARCUS RUST - HIGHLY CONFIDENTIAL  
2     recommends that egg producers restrain  
3     production in order to assure profitable  
4     prices?  
5     MR. BARNES: Object to the form.  
6     It misstates the article.  
7     THE WITNESS: It says right  
8     there everyone should study their own  
9     personal supply/demand conditions and  
10    adjust accordingly. That's what  
11    producers do. Some guys it's to their  
12    benefit not to have chickens, it's to  
13    our benefit to have more chickens.  
14    BY MR. ALLEN:  
15    Q.   Do you agree in this article  
16    that the UEP is recommending that producers  
17    reduce their production?  
18    A.   It says look at their own --  
19    it's a voluntary program, what they can do or  
20    not do.  
21    Q.   What's your understanding as  
22    you sit here today of the sentence that says,  
23    "The best immediate answer to assure  
24    profitable prices is for the industry to show  
25    some restraint"?

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1     MARCUS RUST - HIGHLY CONFIDENTIAL  
2     A.   That would have been the  
3     opinion of whoever wrote that, I guess.  
4     Q.   I understand. I mean, it's a  
5     UEP newsletter. This is the official UEP  
6     newsletter. Correct?  
7     A.   This is the voice mechanism of  
8     the guy that runs the UEP, I guess. I don't  
9     know who writes the article.  
10    Q.   Do you understand that sentence  
11    to mean that the UEP is suggesting by saying  
12    restraint, that UEP producers reduce their  
13    production?  
14    MR. BARNES: Object to the form.  
15    THE WITNESS: Repeat your  
16    question.  
17    BY MR. ALLEN:  
18    Q.   Do you understand that sentence  
19    to mean that the UEP is suggesting by using  
20    the word "restraint," that UEP producers  
21    reduce their production?  
22    MR. BARNES: Same objection.  
23    THE WITNESS: They may have been  
24    targeting us, again, saying that we  
25    shouldn't be out building or adding.

<p style="text-align: right;">Page 118</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     I don't know what they meant by</p> <p>3     restraint.</p> <p>4     BY MR. ALLEN:</p> <p>5     Q.   You testified earlier that you</p> <p>6     never objected to any of the newsletters that</p> <p>7     the UEP published. Is that correct?</p> <p>8     A.   Correct.</p> <p>9     Q.   Do you know whether anyone at</p> <p>10    Rose Acre voiced any objections to this</p> <p>11    newsletter?</p> <p>12    A.   I stated previously, I have no</p> <p>13    knowledge of anyone at our company having</p> <p>14    objected to any newsletter. When someone</p> <p>15    sends you a newsletter, why would you object</p> <p>16    to it?</p> <p>17    Q.   If you didn't agree with what</p> <p>18    was being said --</p> <p>19    A.   UEP is an organization of many</p> <p>20    kinds of farmers. There is suggestions</p> <p>21    they're making that's going to fit one type</p> <p>22    of farmer very well. It isn't going to fit</p> <p>23    for another type of farmer at all.</p> <p>24           - - -</p> <p>25           (Exhibit 13, 3/14/07 United</p>	<p style="text-align: right;">Page 120</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2           On the next page, it goes on to</p> <p>3     say, "The only way to avert this history and</p> <p>4     minimize the market decline is for shell egg</p> <p>5     producers to begin making plans NOW to molt</p> <p>6     or dispose of flocks. Take a look at your</p> <p>7     personal history and learn how many surplus</p> <p>8     eggs you were producing that had to be sold</p> <p>9     to the Egg Clearinghouse, UEP, private</p> <p>10    brokers, or to the egg breakers. Make the</p> <p>11    necessary adjustments."</p> <p>12           Did I read that correctly, Mr.</p> <p>13    Rust?</p> <p>14    A.   You read what it says.</p> <p>15    Q.   I'll note for the record that</p> <p>16    the word "NOW" is bold, underlined and in all</p> <p>17    capital letters. And the last sentence,</p> <p>18    "Make the necessary adjustments" is also in</p> <p>19    bold.</p> <p>20           Do you remember reading this</p> <p>21    article?</p> <p>22    A.   No.</p> <p>23    Q.   Do you agree that the UEP in</p> <p>24    this article is recommending that egg</p> <p>25    producers reduce egg production in order to</p>
<p style="text-align: right;">Page 119</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     Voices newsletter, Bates UE0133214 -</p> <p>3     UE0133217, was marked for</p> <p>4     identification.)</p> <p>5           - - -</p> <p>6     BY MR. ALLEN:</p> <p>7     Q.   Mr. Rust, I'm handing you</p> <p>8     what's been marked as Exhibit 13, which is a</p> <p>9     United Voices newsletter, dated March 14,</p> <p>10    2007, Bates stamped UE0133214 through 217.</p> <p>11    The title of the article on the first page</p> <p>12    is, "Two Important Events Are About To Take</p> <p>13    Place." Correct?</p> <p>14    A.   Yes, that's what the title --</p> <p>15    headline says.</p> <p>16    Q.   Towards the bottom of page 1,</p> <p>17    the very last paragraph, the article says,</p> <p>18    "UEP's Production Planning Calendar reports</p> <p>19    that the supply demand index will reach its</p> <p>20    peak at 148% by the first week of April and</p> <p>21    then begin to quickly decline and bottom out</p> <p>22    at 75% by the second week of May. History</p> <p>23    tells us that we will begin to produce</p> <p>24    surplus eggs the week after Easter and</p> <p>25    continue until Labor Day."</p>	<p style="text-align: right;">Page 121</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     avoid a decline in egg prices?</p> <p>3     A.   I agree it says take a look at</p> <p>4     your personal history and learn how many</p> <p>5     surplus eggs you are producing.</p> <p>6     Q.   What's your understanding why</p> <p>7     the UEP was recommending that producers do</p> <p>8     that?</p> <p>9           MS. ANDERSON: Object to the</p> <p>10    form of the question.</p> <p>11           THE WITNESS: Because, again,</p> <p>12    you have multiple kinds of different</p> <p>13    farmers in that organization. What</p> <p>14    fits one don't fit the rest. So they</p> <p>15    had to tell -- they're a united</p> <p>16    organization of all kinds of egg</p> <p>17    farmers. You have egg breaking</p> <p>18    companies in there, you have companies</p> <p>19    who broke eggs and graded eggs. You</p> <p>20    have companies that contract farms</p> <p>21    only. You have people who have both</p> <p>22    contracts and in-line. You have four</p> <p>23    different, maybe five different kinds</p> <p>24    of chicken farms in that. For them to</p> <p>25    make a broad statement of what fits</p>

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2     one company type doesn't fit the other

3     four. So they have to make a

4     recommendation of something that may

5     fit one or two or three in the room.

6 BY MR. ALLEN:

7     Q.   Do you agree that despite

8     having multiple different types of companies

9     in the UEP, in this newsletter, the UEP is

10    suggesting that all of its members reduce

11    production?

12       MR. BARNES: Object to the --

13       MS. ANDERSON: Object to the

14    form of the question.

15       MR. BARNES: Thank you.

16       THE WITNESS: What are you

17    saying?

18 BY MR. ALLEN:

19    Q.   So generally speaking, Mr.

20    Rust, do you agree that the UEP is

21    recommending in this article that its members

22    reduce their production?

23       MR. BARNES: Same objection.

24       THE WITNESS: That's what they

25    may be -- what it may be saying, yes.

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1     MARCUS RUST - HIGHLY CONFIDENTIAL

2 BY MR. ALLEN:

3     Q.   I mean, I'm looking at the

4    first sentence on the second page that says,

5    "The only way to avert this history and

6    minimize the market decline is for shell egg

7    producers to begin making plans NOW to molt

8    or dispose of flocks." And disposing of

9    flocks reduces egg production, does it not?

10       MR. BARNES: Object to the form.

11       THE WITNESS: Then it says,

12    "Take a look at your personal

13    history..." It's a voluntary thing.

14 BY MR. ALLEN:

15    Q.   I understand it's voluntary. I

16    understand that you're saying that. But do

17    you agree that molting a flock --

18    A.   I agree what it says there.

19    Q.   Well, do you agree that molting

20    a flock reduces production at least

21    temporarily?

22    A.   For the next six weeks.

23    Q.   It reduces production?

24    A.   Only from that house. But it

25    has nothing to do with what he done with his

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1     MARCUS RUST - HIGHLY CONFIDENTIAL

2    house or Joe done with his house or you did

3    with your house. We have no idea what the

4    other person did.

5     Q.   If all of the UEP members

6    molted their flocks at the same time, during

7    that six-week period that the flocks are

8    molting, would egg production go down?

9       MR. BARNES: Object to the form.

10       THE WITNESS: If every producer

11    in the United States molted their

12    flocks tomorrow, production might go

13    down, it would go down.

14       MR. BARNES: For six weeks.

15       THE WITNESS: For six weeks. It

16    don't change overall supply of eggs,

17    though.

18       MR. MONICA: You're answering a

19    little too fast, give him a chance to

20    finish.

21       THE WITNESS: I just want to get

22    this over with.

23       MR. MONICA: I know.

24       MR. BARNES: Take your time,

25    listen to counsel's questions.

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1     MARCUS RUST - HIGHLY CONFIDENTIAL

2    Address his questions.

3 BY MR. ALLEN:

4     Q.   Mr. Rust, I'd like to ask you

5    some questions about the United States Egg

6    Marketers. Will you understand what I'm

7    referring to if I refer to the United States

8    Egg Marketers as USEM?

9     A.   Yes.

10    Q.   Based on your experience on the

11    UEP's board of directors, are the UEP and the

12    USEM independent entities?

13       MS. ANDERSON: I'm sorry, can

14    you repeat? I didn't hear you.

15       MR. DAVIS: Objection. Lacks

16    foundation.

17 BY MR. ALLEN:

18    Q.   I'll repeat the question.

19       Based on your experience on the

20    UEP's board of directors, are the UEP and

21    USEM independent entities?

22       MR. BARNES: May I just

23    interrupt? The U.S. Egg Marketers has

24    been referred to as USEM.

25       MR. ALLEN: I'll refer to it

<p style="text-align: right;">Page 126</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     that way.</p> <p>3     MR. BARNES: So if you say USEM,</p> <p>4     everyone will recognize the name --</p> <p>5     MR. ALLEN: Fair enough.</p> <p>6     MR. BARNES: -- rather than</p> <p>7     USEM.</p> <p>8     MR. ALLEN: Fair enough.</p> <p>9     MR. MONICA: I didn't know what</p> <p>10    USEM was. Sorry.</p> <p>11    MR. BARNES: Sorry for the</p> <p>12    interruption.</p> <p>13    MR. ALLEN: That's how I say it</p> <p>14    in my head.</p> <p>15 BY MR. ALLEN:</p> <p>16    Q.   Mr. Rust, for the rest of the</p> <p>17    deposition I'll refer to the United States</p> <p>18    Egg Marketers as USEM.</p> <p>19    A.   Okay.</p> <p>20    Q.   Based on your experience on the</p> <p>21    UEP's board of directors, are the UEP and</p> <p>22    USEM independent entities?</p> <p>23    A.   Yes.</p> <p>24    Q.   Do you know where the UEP is</p> <p>25    based?</p>	<p style="text-align: right;">Page 128</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     our facility in North Carolina.</p> <p>3     Q.   Do you know when that was?</p> <p>4     A.   About 2006, 2007, something</p> <p>5     like that.</p> <p>6     Q.   Why did Rose Acre join USEM?</p> <p>7     A.   We was building a three and a</p> <p>8     half -- actually were permitted for four</p> <p>9     million bird egg laying complex in North</p> <p>10    Carolina. It was brand new. And we was</p> <p>11    going to be creating a large surplus of eggs</p> <p>12    into that area of the country, and our</p> <p>13    facility was going to be the closest facility</p> <p>14    to the Norfolk port which is the largest</p> <p>15    shipping -- one of the largest shipping ports</p> <p>16    from the United States. And it would have</p> <p>17    gave us an advantage to be a -- we would have</p> <p>18    had surplus eggs that we could have shipped</p> <p>19    there at a better price than anyone else</p> <p>20    could have. We would have netted more.</p> <p>21    Q.   From your North Carolina</p> <p>22    facility?</p> <p>23    A.   From our North Carolina</p> <p>24    facility.</p> <p>25    Q.   Did all the USEM exports in</p>
<p style="text-align: right;">Page 127</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     A.   In Georgia.</p> <p>3     Q.   Do you know where in Georgia?</p> <p>4     A.   Let me think. I forget the</p> <p>5     name of the town. I've never been to their</p> <p>6     office.</p> <p>7     Q.   Do you know where the USEM is</p> <p>8     based?</p> <p>9     A.   I believe it is the same</p> <p>10    office.</p> <p>11    Q.   Same office?</p> <p>12    A.   Yes.</p> <p>13    Q.   What is your understanding of</p> <p>14    the USEM's purpose?</p> <p>15    A.   It's an egg export. Whenever</p> <p>16    they can get large amounts of a big export</p> <p>17    order, it was a group formed to export eggs</p> <p>18    and supply needs for other countries.</p> <p>19    Q.   Is that the -- what else does</p> <p>20    the organization do other than exports, or is</p> <p>21    that it?</p> <p>22    A.   That's the only thing it's</p> <p>23    done.</p> <p>24    Q.   When did Rose Acre join USEM?</p> <p>25    A.   Right after we started building</p>	<p style="text-align: right;">Page 129</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     which Rose Acre participated only use eggs</p> <p>3     from the North Carolina facility?</p> <p>4     MR. BARNES: I'm going to object</p> <p>5     to the form of that question. He can</p> <p>6     answer if you understands it.</p> <p>7     THE WITNESS: From recollection,</p> <p>8     some of what was shipped actually went</p> <p>9     to Japan. And when those would ship,</p> <p>10    they would ship from the Iowa</p> <p>11    facility.</p> <p>12 BY MR. ALLEN:</p> <p>13    Q.   Okay. I don't think I asked</p> <p>14    that question clearly. Rose Acre</p> <p>15    participated in USEM exports. Is that</p> <p>16    correct?</p> <p>17    A.   Correct.</p> <p>18    Q.   And when Rose Acre supplied</p> <p>19    eggs for those exports, did some of the eggs</p> <p>20    come from facilities other than your North</p> <p>21    Carolina facility?</p> <p>22    A.   I would assume most would have</p> <p>23    come from there. That would have been the</p> <p>24    closest to that port. If that's which port</p> <p>25    they got shipped from. Sometimes whenever an</p>

<p style="text-align: right;">Page 130</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     order got done, it wouldn't necessarily go</p> <p>3     from that port.</p> <p>4     Q.   Do you know whether there were</p> <p>5     eggs that Rose Acre supplied for USEM exports</p> <p>6     that came from other facilities?</p> <p>7     A.   I think some come from Iowa, I</p> <p>8     told you earlier, and went west.</p> <p>9     Q.   When Rose Acre joined the USEM,</p> <p>10    were there employees of UEP who were also</p> <p>11    employees of USEM that you know of?</p> <p>12    A.   USEM had a -- there was really</p> <p>13    no employees. They always -- they hired a</p> <p>14    contracted office staff from UEP to do what</p> <p>15    little was done for USEM.</p> <p>16    Q.   So do you know whether some of</p> <p>17    the employees for USEM also worked for UEP?</p> <p>18       MR. DAVIS: Objection.</p> <p>19       Misstates the testimony.</p> <p>20       THE WITNESS: I'm not sure what</p> <p>21       the relationship was of the people. I</p> <p>22       think from my recollection, it could</p> <p>23       have been kind of a contract between</p> <p>24       USEM and United Egg Producers.</p> <p>25   BY MR. ALLEN:</p>	<p style="text-align: right;">Page 132</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     management was the same, meaning were some of</p> <p>3     the managers of the USEM also the managers of</p> <p>4     the UEP?</p> <p>5     A.   Never really had a manager to</p> <p>6     my recollection. At one point in time before</p> <p>7     we were ever a member they used to have an</p> <p>8     individual that done the USEM work. My</p> <p>9     understanding was through the years, they</p> <p>10    never exported enough stuff to justify hiring</p> <p>11    another one when he died.</p> <p>12    Q.   Who ran the USEM?</p> <p>13       MR. BARNES: When?</p> <p>14       THE WITNESS: When?</p> <p>15   BY MR. ALLEN:</p> <p>16    Q.   Whenever you joined. When did</p> <p>17    you join again, Mr. Rust, 2007?</p> <p>18    A.   2006 or '07.</p> <p>19    Q.   So at that time, do you know</p> <p>20    who ran the USEM?</p> <p>21    A.   My recollection, the head of</p> <p>22    USEM was Larry Seger at that time.</p> <p>23    Q.   How about in 2008?</p> <p>24    A.   I think Larry was the chairman</p> <p>25    or whatever, chairman or CEO or whatever his</p>
<p style="text-align: right;">Page 131</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     Q.   Do you by any chance remember</p> <p>3     any specific employees who worked for both</p> <p>4     USEM and UEP?</p> <p>5     A.   I don't specifically know of an</p> <p>6     employee that worked for USEM.</p> <p>7     Q.   Did Gene Gregory work for USEM?</p> <p>8     A.   I don't think so under -- when</p> <p>9     I -- as an employee, I don't think so.</p> <p>10    Q.   Did he work in any capacity for</p> <p>11    USEM?</p> <p>12    A.   He may have represented</p> <p>13    something USEM has a -- under contract from</p> <p>14    U.S. Egg Marketers from UEP.</p> <p>15    Q.   I'm not sure I understand what</p> <p>16    you mean.</p> <p>17    A.   My recollection, and this may</p> <p>18    be totally wrong, is that there was some type</p> <p>19    of a contract arrangement for services</p> <p>20    needed, like to write something down on a</p> <p>21    piece of paper and type it up, mail it out.</p> <p>22    So when UEP would do that under a contractual</p> <p>23    arrangement of some type. I don't -- I</p> <p>24    forget what the details were.</p> <p>25    Q.   Do you know whether any of the</p>	<p style="text-align: right;">Page 133</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     title was. He was another egg producer, he</p> <p>3     ran that organization from -- up until he</p> <p>4     died I think. I don't think he was ever</p> <p>5     replaced.</p> <p>6     Q.   Were you ever a member of the</p> <p>7     UEP's Export Committee?</p> <p>8     A.   I was from the time that we</p> <p>9     joined USEM.</p> <p>10    Q.   What was the purpose of that</p> <p>11    committee?</p> <p>12    A.   That was whether or not to --</p> <p>13    we would look at an export order and make a</p> <p>14    determination if it was something we would</p> <p>15    take to the members to vote on whether or not</p> <p>16    they would do it or not.</p> <p>17    Q.   I'd like to talk to you a</p> <p>18    little bit about that process. Did USEM or</p> <p>19    UEP members initiate the export process?</p> <p>20       MR. BARNES: Object to the form.</p> <p>21       Compound.</p> <p>22       MR. ALLEN: I'll restate that</p> <p>23       question. I don't think it was clear.</p> <p>24   BY MR. ALLEN:</p> <p>25    Q.   Who decided whether an export</p>

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<p style="text-align: right;">Page 134</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     should happen, was it the USEM or the UEP?</p> <p>3     A.   First of all, there had to be</p> <p>4     someone, some part of the planet that wanted</p> <p>5     to buy the egg. And it was pretty well known</p> <p>6     within the broker groups around the world</p> <p>7     that all of the individuals -- or there's a</p> <p>8     lot of individual UEP members who exported</p> <p>9     eggs on a regular basis. And USEM was only</p> <p>10    going to take export orders of large</p> <p>11    quantities, because what would happen, a lot</p> <p>12    of the buyers would go up, they would want to</p> <p>13    buy a boatload or a half a boatload of eggs.</p> <p>14    No producer had that much surplus to be able</p> <p>15    to fill that order. So it would take a --</p> <p>16    we'd have to find -- everyone would have to</p> <p>17    agree to put in enough eggs to fill the boat</p> <p>18    up for the shipment. So to do that, USEM</p> <p>19    then would contact the Export Committee and</p> <p>20    says we have a broker that says they had so</p> <p>21    many or if they had so many, they would call</p> <p>22    a broker and say can you find someone that's</p> <p>23    interested in this amount of eggs.</p> <p>24    Q.   So you said the broker would</p> <p>25    call USEM?</p>	<p style="text-align: right;">Page 136</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     Q.   So would the broker sometimes</p> <p>3     call the USEM Committee directly?</p> <p>4     A.   They would call to the contact</p> <p>5     person there at UEP.</p> <p>6     Q.   At UEP?</p> <p>7     A.   Who was under contract with</p> <p>8     USEM.</p> <p>9     Q.   So sometimes the brokers would</p> <p>10    call the UEP directly saying we have some</p> <p>11    people who need some eggs.</p> <p>12    A.   There's only like four major</p> <p>13    brokers in the world that handle the exports,</p> <p>14    and if they was looking for something, they</p> <p>15    would contact the contact person at USEM --</p> <p>16    Q.   At USEM?</p> <p>17    A.   -- who was actually an employee</p> <p>18    of UEP, from my understanding, under contract</p> <p>19    to USEM.</p> <p>20           MR. BARNES: Marcus, you're</p> <p>21           using the term "USEM."</p> <p>22           THE WITNESS: USEM.</p> <p>23           MR. BARNES: He used USEM and we</p> <p>24           corrected him.</p> <p>25           MR. MONICA: Now you're doing</p>
<p style="text-align: right;">Page 135</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     A.   That's what happens most of the</p> <p>3     time, yes.</p> <p>4     Q.   Who would they call at USEM, do</p> <p>5     you know?</p> <p>6     A.   They would -- there was --</p> <p>7     either they would contact one of the girls</p> <p>8     down there. I think it's Phyllis maybe.</p> <p>9     Q.   So the broker would call the</p> <p>10    USEM and say we're ready for an export, and</p> <p>11    would the USEM then call the UEP/USEM</p> <p>12    Committee?</p> <p>13    A.   Correct.</p> <p>14    Q.   And then the USEM Committee</p> <p>15    would then contact the members to see whether</p> <p>16    it could generate enough eggs for the export.</p> <p>17    Is that correct?</p> <p>18    A.   And/or the Export Committee may</p> <p>19    have called the broker and said the USEM</p> <p>20    can't come up, is there anyone looking. I</p> <p>21    don't know which way it took place. But it</p> <p>22    took -- many times we would get offers and</p> <p>23    then when we'd come in and make an offer and</p> <p>24    it would be at the wrong time or something</p> <p>25    that didn't work for the members.</p>	<p style="text-align: right;">Page 137</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     it.</p> <p>3           MR. BARNES: Now you're doing</p> <p>4     it.</p> <p>5           THE WITNESS: Well, USEM is what</p> <p>6     we always call it.</p> <p>7           MR. BARNES: Oh, is it really?</p> <p>8           THE WITNESS: Yes.</p> <p>9           MR. BARNES: I never knew that.</p> <p>10    You call it whatever you want.</p> <p>11           THE WITNESS: USEM, whatever.</p> <p>12    USEM.</p> <p>13           MR. BARNES: As long as --</p> <p>14           THE WITNESS: As long as the gal</p> <p>15    understands it.</p> <p>16           MR. BARNES: As long as counsel</p> <p>17    understands what you're saying.</p> <p>18           MR. MONICA: And the court</p> <p>19    reporter.</p> <p>20           MR. BARNES: And the court</p> <p>21    reporter.</p> <p>22    BY MR. ALLEN:</p> <p>23    Q.   How many USEM exports did Rose</p> <p>24    Acre participate in?</p> <p>25    A.   A couple maybe.</p>

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<p style="text-align: right;">Page 138</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     Q.   Less than five, more than five?</p> <p>3     A.   Less than five. Well, I take</p> <p>4   that back. What time period?</p> <p>5     Q.   Total.</p> <p>6     A.   Today probably -- we've done a</p> <p>7   lot in the last year and a half.</p> <p>8     Q.   Okay. How about 2008 -- or</p> <p>9   2007 to 2008?</p> <p>10    A.   I think in that time period,</p> <p>11   maybe a couple. I don't recall the dates.</p> <p>12   You'd have to look at the records.</p> <p>13    Q.   Between 2007 and 2008, you</p> <p>14   think it was less than five or more than</p> <p>15   five?</p> <p>16    A.   I have no idea when the orders</p> <p>17   were, when the date. I just -- you'd have to</p> <p>18   show me some paperwork.</p> <p>19    Q.   Why did Rose Acre participate</p> <p>20   in exports, was it to make money?</p> <p>21    A.   It was because we could get a</p> <p>22   better price for the egg on the export than</p> <p>23   we could breaking it or we wouldn't have</p> <p>24   participated.</p> <p>25    Q.   So you were always paid for the</p>	<p style="text-align: right;">Page 140</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     A.   Correct.</p> <p>3     Q.   So who is communicating with</p> <p>4   the broker on the price issue, is it the USEM</p> <p>5   committee?</p> <p>6     A.   The committee would have a --</p> <p>7   we would have a conference call. There would</p> <p>8   have been a contact from either the broker</p> <p>9   that said -- I'm trying to think how it would</p> <p>10   work. They would contact us and say we've</p> <p>11   got an offer for 50 loads or 100 loads at</p> <p>12   this price. Then we would have a discussion</p> <p>13   and say yea or nay, we like that, don't like</p> <p>14   it or we think the price should be this.</p> <p>15    Q.   When you say "we," are you</p> <p>16   referring to the USEM Committee?</p> <p>17    A.   The committee. Then we would</p> <p>18   have to take it to the members to vote on</p> <p>19   whether they would accept that price or not.</p> <p>20    Q.   The members would vote?</p> <p>21    A.   Correct.</p> <p>22    Q.   So then the members always knew</p> <p>23   how much they were going to be paid for the</p> <p>24   eggs before they decided whether to</p> <p>25   participate or before they voted?</p>
<p style="text-align: right;">Page 139</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2   eggs?</p> <p>3     A.   Yes.</p> <p>4     Q.   Who would negotiate the pricing</p> <p>5   in a USEM export?</p> <p>6     A.   It would be a -- kind of a</p> <p>7   banter back and forth. That was up to the</p> <p>8   Export Committee to determine if the price</p> <p>9   was good enough to take to the members to</p> <p>10   vote on. The members ultimately would decide</p> <p>11   the price.</p> <p>12    Q.   Would the members actually</p> <p>13   negotiate the price or would they just accept</p> <p>14   the price that was presented to them? Or</p> <p>15   decide whether to accept the price that was</p> <p>16   presented to them?</p> <p>17    A.   I think, from my experience, it</p> <p>18   was they always listened to what the broker</p> <p>19   would tell them. And after we got involved,</p> <p>20   because we exported, we made sure that the</p> <p>21   price they got was as good a price as they</p> <p>22   could get.</p> <p>23    Q.   So the broker is the go between</p> <p>24   between the buyer and the egg sellers.</p> <p>25   Correct?</p>	<p style="text-align: right;">Page 141</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     A.   Correct.</p> <p>3     Q.   Did Rose Acre participate in</p> <p>4   any egg exports where the eggs were sold for</p> <p>5   less than they could have been sold for in</p> <p>6   the United States?</p> <p>7     A.   At the time of the sale, we</p> <p>8   always made sure it was a price better than</p> <p>9   we could get here breaking eggs.</p> <p>10    Q.   Did Rose Acre ever participate</p> <p>11   in an export where it realized less net</p> <p>12   profit after shipping and other transactional</p> <p>13   costs than it could have realized if it sold</p> <p>14   the eggs in the United States?</p> <p>15    A.   Any time you make a sale and if</p> <p>16   you miss-guess where the market was going,</p> <p>17   you could have been ahead or behind, Monday</p> <p>18   morning quarterbacking on any sale. We</p> <p>19   always looked at it what can we get from ECI,</p> <p>20   what can we get from U.S. breaker, what can</p> <p>21   we get from the world market.</p> <p>22    Q.   So does Rose Acre ever go into</p> <p>23   an export knowing it was making less net</p> <p>24   profit than it could make if it sold the eggs</p> <p>25   in the United States?</p>



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1     MARCUS RUST - HIGHLY CONFIDENTIAL

2     A.   We got more revenue. Sometimes

3   you weren't -- just because you're selling,

4   whether there's a profit or not has nothing

5   to do with it. We always look to maximize

6   total revenue. If we got more revenue, we

7   participated in the export.

8     Q.   Do you agree that you can have

9   more revenue and less profit?

10    A.   Sometimes you have more -- you

11   have lots of revenue and no profit.

12    Q.   Right. Generally speaking,

13   Rose Acre wants profit, right, that's why you

14   sell eggs?

15    A.   We want revenue and then we

16   hope there's something left over.

17    Q.   Which would be profit?

18    A.   Would be profit.

19    Q.   So do you agree that while an

20   export or any -- just generally speaking, you

21   could have a higher price somewhere, but

22   because of other transactional costs make

23   less money, so -- well, let me strike that.

24           I'll just ask this question:

25   Did Rose Acre participate in an export where

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1     MARCUS RUST - HIGHLY CONFIDENTIAL

2   it made less profit than it could have made

3   if it sold the same eggs in the United

4   States?

5           MR. BARNES: Object to the form.

6           THE WITNESS: I would have to

7   look at the records. I don't -- I

8   think at the time we made any sales,

9   we maximized the revenue we could get

10   at the time.

11   BY MR. ALLEN:

12    Q.   Did USEM ever export eggs in

13   order to reduce the supply of eggs in the

14   United States?

15    A.   If you load any amount of eggs

16   up, put them on a boat and take them out of

17   the United States, there is less eggs in the

18   United States because you just loaded them on

19   a boat and shipped them out.

20    Q.   Did the USEM ever export eggs

21   for that purpose, to reduce supply?

22    A.   To sell extra eggs surplus,

23   yes.

24    Q.   Did they -- did they

25   actually -- did USEM export eggs for the

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1     MARCUS RUST - HIGHLY CONFIDENTIAL

2   purpose of reducing the supply in the United

3   States?

4           MR. BARNES: Objection.

5           MS. ANDERSON: Objection.

6           MR. BARNES: Asked and answered.

7           THE WITNESS: We exported eggs

8   to sell surplus eggs that we had that

9   we could utilize for better money

10   overseas.

11   BY MR. ALLEN:

12    Q.   But was the purpose of the

13   export to reduce the supply and increase the

14   prices in the United States?

15           MR. BARNES: Same objection.

16           THE WITNESS: What is the

17   purpose of when you sell corn, you

18   know, they load boats of corn and

19   export that every day. Do we condemn

20   corn farmers for selling corn

21   overseas?

22   BY MR. ALLEN:

23    Q.   Well, I'm asking whether the

24   purpose -- you're not answering the question

25   I'm asking. The question I'm asking is

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1     MARCUS RUST - HIGHLY CONFIDENTIAL

2   whether --

3           MR. BARNES: He is, Counsel.

4   BY MR. ALLEN:

5    Q.   -- whether the purpose of the

6   export is to reduce the supply in the United

7   States and increase the prices?

8    A.   The purpose of --

9           MR. BARNES: Objection to form.

10   Asked and answered. You can answer it

11   again, Mr. Rust.

12           THE WITNESS: The purpose of an

13   export for us was to maximize revenue.

14   BY MR. ALLEN:

15    Q.   To maximize revenue, how so?

16           MR. BARNES: Object to the form.

17   Vague and indefinite.

18           THE WITNESS: For the sale of

19   the egg that we can make at that time.

20   BY MR. ALLEN:

21    Q.   So is it your testimony here

22   today, sir, that the USEM did not export eggs

23   to reduce the supply of the eggs in the

24   United States? Is that your testimony?

25           MR. BARNES: Object to the form.

<p style="text-align: right;">Page 146</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     THE WITNESS: No.</p> <p>3 BY MR. ALLEN:</p> <p>4     Q.   That's not your testimony? Mr.</p> <p>5 Rust, I'm trying to establish whether --</p> <p>6 you're saying that you're exporting eggs to</p> <p>7 generate revenue. Correct?</p> <p>8     A.   Correct.</p> <p>9     Q.   Do you agree that when -- and</p> <p>10 you stated this earlier, that when eggs are</p> <p>11 exported, there are less eggs in the United</p> <p>12 States. Correct?</p> <p>13     A.   If you load the egg on a boat,</p> <p>14 there's going to be less in the United</p> <p>15 States.</p> <p>16     Q.   And I'm wondering if the USEM,</p> <p>17 to your knowledge, ever organized an export</p> <p>18 specifically to reduce the supply of eggs in</p> <p>19 the United States?</p> <p>20     MR. BARNES: Object to the form.</p> <p>21     THE WITNESS: Not the supply.</p> <p>22     We reduced the amount.</p> <p>23 BY MR. ALLEN:</p> <p>24     Q.   How is the amount different</p> <p>25 from the supply?</p>	<p style="text-align: right;">Page 148</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2 specifications we're allowed to ship eggs to</p> <p>3 a retail customer once they get -- they have</p> <p>4 to be within five days or seven days of</p> <p>5 dating from the date they're laid. A surplus</p> <p>6 egg, whenever their sales fall off, then we</p> <p>7 start accumulating surplus. We have eggs</p> <p>8 that we get produced that we can't ever ship</p> <p>9 to those customers because of that dating</p> <p>10 requirement because they require fresh eggs.</p> <p>11 They'll have date of lay specifications when</p> <p>12 you have to ship them. The surplus egg is</p> <p>13 one that doesn't meet those code dates. So</p> <p>14 we as a producer, we have to anticipate what</p> <p>15 the customer is going to order and we take</p> <p>16 historical records and look at what their</p> <p>17 orders, you think their orders are going to</p> <p>18 be, and you know you're going to have X</p> <p>19 amount of surplus in a time period. If you</p> <p>20 know you're going to have X amount of surplus</p> <p>21 in a time period, then you take that surplus</p> <p>22 and you make a projection and say, we have to</p> <p>23 find another home for that. That becomes --</p> <p>24 your other home becomes how can I maximize my</p> <p>25 revenue. You know, the egg market is high</p>
<p style="text-align: right;">Page 147</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     A.   Because you have -- if you load</p> <p>3 eggs -- you have inventory, you've got</p> <p>4 projected inventory which you're going to</p> <p>5 have. And if you don't -- if you're going to</p> <p>6 have extra eggs, you can make a commitment to</p> <p>7 sell them. If you're not going to have</p> <p>8 extra, you can't make a commitment to sell</p> <p>9 them because you don't have extra.</p> <p>10     Q.   Do you agree that the reduction</p> <p>11 in supply of eggs that resulted in exports</p> <p>12 sometimes caused egg prices in the United</p> <p>13 States to go up?</p> <p>14     MR. BARNES: Object to the form.</p> <p>15     Speculation.</p> <p>16     THE WITNESS: It's possible.</p> <p>17     Sometimes it will go down. You don't</p> <p>18 know. It's all a matter of what the</p> <p>19 demand was here in the U.S.</p> <p>20 BY MR. ALLEN:</p> <p>21     Q.   What are surplus eggs?</p> <p>22     A.   What are surplus eggs?</p> <p>23     Q.   Yes.</p> <p>24     A.   Most of the retail chains have</p> <p>25 what they call -- we have -- in</p>	<p style="text-align: right;">Page 149</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2 usually in the fall. It's usually very cheap</p> <p>3 in the spring and summer. As a producer,</p> <p>4 we -- your goal is to maximize revenue from</p> <p>5 that flock of birds, you're constantly</p> <p>6 adjusting your flocks, you're constantly</p> <p>7 adjusting the amount of eggs that you have</p> <p>8 and you try -- if you're going to do a</p> <p>9 remodel, if you're going to do whatever,</p> <p>10 you're always looking and balancing that</p> <p>11 supply.</p> <p>12     Q.   So is a surplus egg one that</p> <p>13 just doesn't meet the fresh by date?</p> <p>14     A.   Correct.</p> <p>15     Q.   It's still a good egg, though?</p> <p>16     A.   It's a good egg, but you're</p> <p>17 limited who you can sell it to. And the</p> <p>18 breakers know that, so the breakers look at</p> <p>19 it, they'll sit there and if think that we're</p> <p>20 producing a -- if the non-breakers are</p> <p>21 producing a surplus, they immediately drop</p> <p>22 the prices and don't offer as much. Then the</p> <p>23 market goes down.</p> <p>24     Q.   How long is an egg good?</p> <p>25     A.   It can be broken for -- I think</p>

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1     MARCUS RUST - HIGHLY CONFIDENTIAL

2 the law lets you break it for 60 days. And

3 you can't sell it in the shell market if it's

4 over 30 days old. So you have a very limited

5 time window. In our coolers at our farms, we

6 can hold three and a half days' worth of

7 production total. So, you know, the old

8 saying, sell them or smell them.

9     Q. Got it.

10    A. You have to do a lot of

11 projecting of where you think you're going to

12 be.

13     - - -

14     (Exhibit 15, 2/03 United Voices

15 newsletter, Bates UE0135552 -

16 UE0135556, was marked for

17 identification.)

18     - - -

19 BY MR. ALLEN:

20    Q. Mr. Rust, I'm handing what's

21 been marked as Exhibit 15.

22     MR. BARNES: No 14?

23     MR. ALLEN: We skipped one.

24     MR. BARNES: Reminds me of

25 bingo.

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1     MARCUS RUST - HIGHLY CONFIDENTIAL

2 BY MR. ALLEN:

3     Q. Exhibit 15 is February 2003 UEP

4 newsletter, Bates stamped UE0135552 through

5 56. I'll direct your attention to the

6 article titled, "UEP Thanks USEM Members" on

7 the third page of the newsletter. There are

8 two second pages in the edition that was

9 produced, so it's actually on the fourth page

10 of the packet, page Bates stamp is UE0135555.

11 Do you see the article, Mr. Rust?

12    A. Yes.

13    Q. The article states, "During

14 times of the year when demand for eggs is

15 low, exporting has proven to be very helpful.

16 A great big 'Thank You' goes out to the 61

17 companies that support the export program

18 through their USEM membership. These

19 companies are committed to improving the

20 market during these low demand periods.

21 These 61 companies understand the impact and

22 export, at the right time and the right

23 number of loads, can benefit the industry.

24 They are so committed to USEM and exporting

25 that they are willing to pay their share even

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2 though non-members benefit without

3 contributing. If your company is not listed

4 below, now is a great time to join USEM and

5 help share in the costs. Without better

6 participation, future export opportunities

7 are questionable. Therefore, leading to

8 higher suppliers and lower egg prices. Who

9 wants that?"

10    Did I read that correctly, Mr.

11 Rust?

12    A. That's what it reads.

13    Q. You agree that this article

14 states that egg exports can improve the

15 prices of eggs in the United States?

16     MR. BARNES: Object to the form

17 of the question. The document speaks

18 for itself.

19     THE WITNESS: I agree that's

20 what it says there.

21 BY MR. ALLEN:

22    Q. You were a UEP board member in

23 2003, correct?

24    A. Yes. But I was not a member of

25 USEM at that time.

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2     MR. BARNES: You're not listed

3 as one of those 61 companies, either.

4     - - -

5     (Exhibit 16, Two E-mails, Bates

6 RAUPDATE0043641 & RAUPDATE0044348, was

7 marked for identification.)

8     - - -

9 BY MR. ALLEN:

10    Q. Mr. Rust, I'm handing you

11 what's been marked as Exhibit 16, which is an

12 e-mail from Gene Gregory dated December 21,

13 2007, Bates stamped RAUPDATE0043641.

14     Mr. Rust, you're shown as one

15 of the recipients of this e-mail. Correct?

16    A. Yes.

17    Q. Did you review this document

18 when preparing for your deposition, Mr. Rust?

19    A. No.

20    Q. Do you want to read the e-mail?

21    A. Do you want me to read it?

22 [Reviewing document.]

23     I've read it.

24    Q. This e-mail is about a

25 commitment by the UEP to donate 50 truckloads



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2 of eggs to a food bank approximately two

3 weeks before Easter. Is that right?

4     A.    Yes.

5     Q.    Towards the bottom of the

6 e-mail it says in bold, "While we have not

7 said so before - think how much this could

8 help improve the price of eggs around Easter

9 when 50 loads are taken off the market and

10 donated. Think what would happen if United

11 States Egg Marketers...were to export 50

12 loads about that time."

13         Did I read that correctly, Mr.

14 Rust?

15     A.    Yes.

16     Q.    Do you agree that Mr. Gregory

17 in this e-mail is saying that a USEM export

18 of 50 loads two weeks before Easter would

19 increase the egg prices?

20         MR. BARNES: Objection to form.

21         MR. DAVIS: Objection. Calls

22 for speculation.

23         THE WITNESS: I don't agree.

24 BY MR. ALLEN:

25     Q.    What is your understanding as

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2 you sit here today, Mr. Rust, and based on

3 your experience as a member of the UEP board

4 of directors as to what Mr. Gregory means in

5 this e-mail?

6         MR. DAVIS: Objection.

7         THE WITNESS: Well, 50 loads

8 isn't going to adjust the egg market

9 one way or the other.

10 BY MR. ALLEN:

11     Q.    It's not --

12         MR. DAVIS: Lacks any foundation

13 to testify as to what Mr. Gregory

14 means.

15         COURT REPORTER: Mr. Davis,

16 please repeat your objection.

17         MR. DAVIS: Mr. Rust lacks any

18 foundation to testify as to what Mr.

19 Gregory means.

20 BY MR. ALLEN:

21     Q.    Mr. Rust, I don't want you to

22 speculate. I'm asking you what your

23 understanding of this is as you sit here

24 today based on your experience as a board

25 member of the UEP?

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2         MR. DAVIS: Counsel, excuse me.

3         You're asking Mr. Rust specifically

4 what Mr. Gregory means. Those are

5 your words.

6 BY MR. ALLEN:

7     Q.    Did you understand my question?

8         MR. DAVIS: You're absolutely

9 asking him to speculate.

10         THE WITNESS: No.

11 BY MR. ALLEN:

12     Q.    Did you understand my question,

13 Mr. Rust?

14     A.    No. Ask it again.

15     Q.    I'm asking you what your

16 understanding of this paragraph in this

17 e-mail means as you sit here today and based

18 on your significant experience in the egg

19 industry?

20     A.    My experience in the egg

21 industry, 50 loads of eggs one way or the

22 other isn't going to make that much

23 difference.

24     Q.    Why is that?

25     A.    It's a drop in the ocean.

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2     Q.    So do you disagree with Mr.

3 Gregory's statement that this 50 load

4 donation could improve the price of eggs

5 around Easter?

6         MR. BARNES: Object to the form.

7         THE WITNESS: 50 loads is half

8 our daily inventory. Nothing in the

9 country.

10 BY MR. ALLEN:

11     Q.    Would reducing the supply of

12 eggs by 50 truckloads two weeks before Easter

13 increase the price of eggs?

14         MR. BARNES: Object to the form

15 of the question. Asked and answered.

16         THE WITNESS: I personally don't

17 believe so.

18 BY MR. ALLEN:

19     Q.    Is demand for eggs typically

20 higher around Easter?

21     A.    Demand, years ago it was.

22 Today it's a -- what I call a three second

23 holiday.

24     Q.    Why is that?

25     A.    If you save inventory for

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2     Easter, you could get burned with it and

3     you're going to -- the price after Easter

4     drops like a rocket. I tell our people don't

5     ever build inventory for Easter anymore.

6     Q.    So the price after Easter drops

7     like a rocket?

8     A.    Yes. People buy plastic eggs

9     today.

10    Q.    Is the price generally higher

11    around Easter?

12    A.    It's generally higher is the

13    perception.

14    Q.    In 2007 -- you said years ago

15    the demand was higher, and it sounds like

16    you're saying that now the demand is not so

17    high?

18           MR. BARNES: Object to the form.

19           THE WITNESS: Easter is not the

20    holiday that us egg guys used to think

21    it was. Years ago when people would

22    hand color and do all that, Easter was

23    a great demand period. What's

24    happened through the years, you know,

25    go to an egg hunt today, they don't

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2     hunt with real eggs, they hunt with

3     plastic eggs. So we don't have

4     that -- the perception of Easter is

5     still a great market, but in reality,

6     it's what I -- what we lose the week

7     after Easter because of the eggs that

8     you did get colored we tend to eat and

9     they -- so you have a lot and then

10    they don't buy any the week after.

11    Then the market crashes usually after

12    Easter always.

13           - - -

14           (Exhibit 17, 8/1/08 Letter,

15    Bates RA0019214 - RA0019216, was

16    marked for identification.)

17           - - -

18    BY MR. ALLEN:

19    Q.    Mr. Rust, I'm handing you

20    what's been marked as Exhibit 17, which is a

21    letter to you from Gene Gregory dated

22    August 1, 2008, Bates stamped RA0019214.

23           Do you recognize this letter?

24    A.    Yeah, I can't say I recognize

25    it, but I think it looks like something we

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2     would have got.

3     Q.    The subject line states,

4     "Export Order Approved By Members." And the

5     letter pertains to a USEM export that Rose

6     Acre participated in. Correct?

7     A.    Yes.

8     Q.    Would you like to read the

9     letter?

10    A.    I agree with what it -- it says

11    what it says.

12    Q.    The second line of the letter

13    says, "Your percentage share of this export

14    is 15,697 cases." How is that percentage

15    determined?

16    A.    By the members of USEM and

17    amount of birds that they had. They just

18    took an equal percentage of birds versus the

19    order, whoever listed the amount of birds or

20    bird capacity, we had, that's what percent of

21    the order you got as a member. It was an

22    equal, everyone got an equal value or equal

23    share of the order.

24    Q.    So your percentage, your export

25    percentage was based on your production

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2     capacity?

3     A.    Yes.

4     Q.    As compared to the rest of the

5     UEP members?

6     A.    No.

7           MR. BARNES: Object to the form.

8    BY MR. ALLEN:

9    Q.    No?

10   A.    No.

11   Q.    So as compared to what then?

12   A.    USEM members.

13   Q.    USEM members?

14   A.    Correct. You said UEP.

15   Q.    That's right, I did.

16           The last paragraph of the

17   letter states, "For those requesting UEP

18   traders to purchase their commitment in the

19   open market, you will be invoiced the

20   difference between the sale price of 58 cents

21   and the average price we have to pay to

22   purchase all the eggs in this pool. We would

23   prefer to purchase all these eggs from USEM

24   members if at all possible."

25           Did I read that correctly?

<p style="text-align: right;">Page 162</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     A.    Yes.</p> <p>3     Q.    Doesn't this suggest that the</p> <p>4 export sale price of 58 cents was lower than</p> <p>5 the price of eggs on the open market?</p> <p>6     MR. BARNES: Object to the form.</p> <p>7     The document speaks for itself.</p> <p>8     THE WITNESS: It depends on what</p> <p>9     the market was at that time.</p> <p>10  BY MR. ALLEN:</p> <p>11    Q.    Okay. But it sounds like the</p> <p>12 USEM agreed to a sale price of 58 cents. Is</p> <p>13 that right?</p> <p>14    MR. BARNES: Object to the form.</p> <p>15    THE WITNESS: It don't sound,</p> <p>16    that's what it says.</p> <p>17  BY MR. ALLEN:</p> <p>18    Q.    And then it goes on to say,</p> <p>19 "...you will be invoiced the difference</p> <p>20 between the sale price of 58 cents and the</p> <p>21 average price we have to pay to purchase all</p> <p>22 the eggs in this pool."</p> <p>23    So there's a difference between</p> <p>24 the sale price, the export price of 58 cents</p> <p>25 and what USEM might have to pay on the open</p>	<p style="text-align: right;">Page 164</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     we get more break in numbers, get more</p> <p>3     for the export order.</p> <p>4  BY MR. ALLEN:</p> <p>5     Q.    So is it true that sometimes</p> <p>6 members had to go out and get eggs for an</p> <p>7 export that cost more than they were going to</p> <p>8 be paid for the eggs by participating in the</p> <p>9 export?</p> <p>10    MR. BARNES: Object to the form.</p> <p>11    THE WITNESS: From the time a</p> <p>12 sale would be made to the time that</p> <p>13 the delivery was made, the market can</p> <p>14 be different. So they may have ended</p> <p>15 up paying more or paying less,</p> <p>16 depending on what the market, what the</p> <p>17 demand period in the market time was</p> <p>18 at the time. It's hard to say. You'd</p> <p>19 have to look at each specific order</p> <p>20 and look and see what eggs traded at</p> <p>21 before and after or during.</p> <p>22  BY MR. ALLEN:</p> <p>23    Q.    Do you remember how Rose Acre</p> <p>24 provided its share of eggs for this export</p> <p>25 specifically?</p>
<p style="text-align: right;">Page 163</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2 market to provide those eggs. Correct?</p> <p>3     MR. BARNES: Object.</p> <p>4     THE WITNESS: It could have been</p> <p>5     either direction.</p> <p>6  BY MR. ALLEN:</p> <p>7     Q.    So sometimes, then, the USEM</p> <p>8 would purchase eggs for an export that cost</p> <p>9 more than they were going to be paid for the</p> <p>10 eggs?</p> <p>11    A.    They could have.</p> <p>12    Q.    Why would the UEP members</p> <p>13 participate in that kind of export when the</p> <p>14 export price they're being paid for the eggs</p> <p>15 is less than what the price of eggs is on the</p> <p>16 open market?</p> <p>17    MR. BARNES: Object to the form.</p> <p>18    THE WITNESS: It depends on the</p> <p>19 time of the year when -- what the eggs</p> <p>20 availability was. Certain members may</p> <p>21 not have had extra eggs at that given</p> <p>22 time. To get their percentage, they</p> <p>23 may have had to go out to get it. In</p> <p>24 our situation we usually had the eggs,</p> <p>25 because we always looked at it could</p>	<p style="text-align: right;">Page 165</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     A.    Our chickens produced those</p> <p>3 eggs.</p> <p>4     Q.    Do you know whether for this</p> <p>5 export Rose Acre made more money exporting</p> <p>6 these eggs than it could have made if it sold</p> <p>7 these eggs in the United States?</p> <p>8     A.    We wouldn't have committed to</p> <p>9 pricing to an export unless the pricing was</p> <p>10 for better than we could have gotten for them</p> <p>11 here.</p> <p>12    Q.    Mr. Rust, when did the Rose</p> <p>13 Acre -- I'm sorry, strike that.</p> <p>14    When did Rose Acre join the</p> <p>15 UEP's Animal Care Certified Program, later</p> <p>16 called the UEP Certified Program?</p> <p>17    A.    Sometime within six months of</p> <p>18 us joining UEP.</p> <p>19    Q.    Within six months of joining</p> <p>20 UEP?</p> <p>21    A.    Yes. I can't say that was all</p> <p>22 of our flocks, but part of them.</p> <p>23    Q.    You said that Rose Acre joined</p> <p>24 the UEP in 2002. Correct?</p> <p>25    A.    Correct.</p>

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<p style="text-align: right;">Page 166</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     Q.   Why did Rose Acre join the UEP</p> <p>3   Certified Program?</p> <p>4     A.   We had multiple egg customers</p> <p>5   who were requesting in their specifications</p> <p>6   for us to sell them eggs, we were going to</p> <p>7   have to be in the UEP Animal Care Certified</p> <p>8   Program.</p> <p>9     Q.   Which customers?</p> <p>10    A.   At that time it was Wal-Mart</p> <p>11   and Kroger.</p> <p>12    Q.   Did they say that they weren't</p> <p>13   going to do business with Rose Acre anymore</p> <p>14   unless Rose Acre joined the UEP?</p> <p>15    A.   Yes. My understanding was is</p> <p>16   they were -- in their specifications there</p> <p>17   was going to be including the specification</p> <p>18   that the eggs had to meet and be done</p> <p>19   according to those standards.</p> <p>20    Q.   Did they --</p> <p>21    A.   And they were going to agree to</p> <p>22   pay us more money for us to join those</p> <p>23   standards, and they did.</p> <p>24    Q.   Did they explain why Rose Acre</p> <p>25   joining UEP or subscribing to those standards</p>	<p style="text-align: right;">Page 168</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2   do 85 inches. Well, the retail grocery</p> <p>3   people decided, wait a second, if everyone</p> <p>4   starts -- if Kroger has one spec and Myers</p> <p>5   has another spec, Wal-Mart has another spec,</p> <p>6   pretty soon all these egg producers are only</p> <p>7   going to be tied to that and they're not</p> <p>8   going to get competitive bids. They wanted</p> <p>9   all the egg producers to be on the same</p> <p>10   specification.</p> <p>11           My understanding, they went to,</p> <p>12   I think it was FMI or somebody, went to the</p> <p>13   UEP organization which we was not a member at</p> <p>14   the time, and they come up with this plan</p> <p>15   that would be a phased-in period to get</p> <p>16   everybody to a program that wouldn't disrupt</p> <p>17   the marketplace. They didn't want a</p> <p>18   disruption in the marketplace.</p> <p>19    Q.   Isn't it true that under the</p> <p>20   UEP program, egg producers were required to</p> <p>21   increase the cage space per hen?</p> <p>22    A.   To get to the Target that FMI</p> <p>23   wanted us to get to I guess.</p> <p>24    Q.   What does FMI stand for?</p> <p>25    A.   Food Marketing Institute.</p>
<p style="text-align: right;">Page 167</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2   was important to them?</p> <p>3     A.   Yes.</p> <p>4     Q.   What did they say?</p> <p>5     A.   They were trying to get the</p> <p>6   animal rightists off their back on how</p> <p>7   different producers were producing eggs. And</p> <p>8   they didn't want -- they wanted to maintain a</p> <p>9   competitive playing field of producers out</p> <p>10   there all on the same specification. They</p> <p>11   didn't want Kroger -- what had happened in</p> <p>12   the egg business, McDonald's come out and</p> <p>13   announced to get -- you know, when the animal</p> <p>14   rights groups started attacking them,</p> <p>15   McDonald's came out and said, we're going to</p> <p>16   give all of our chickens, I think it was</p> <p>17   75 inches of space, when the rest of the</p> <p>18   industry was -- a lot of us was giving</p> <p>19   48 inches or 50 inches. McDonald's come out</p> <p>20   and done that spec. Well, Burger King comes</p> <p>21   along and their QC fanfare, whatever you want</p> <p>22   to call it, PR department says, we're better</p> <p>23   than McDonald's, we're going to give our</p> <p>24   chickens 80 inches of space. And then some</p> <p>25   other chain comes in and said we're going to</p>	<p style="text-align: right;">Page 169</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2   That's a retail grocers' group or association</p> <p>3   of retail grocers.</p> <p>4     Q.   How much more space per hen was</p> <p>5   required under the certified program?</p> <p>6           MS. ANDERSON: Object to the</p> <p>7   form.</p> <p>8           THE WITNESS: At what time</p> <p>9   period?</p> <p>10   BY MR. ALLEN:</p> <p>11    Q.   When Rose Acre joined in 2002.</p> <p>12    A.   I'm not sure if immediately</p> <p>13   there was any, but over a phased-in period of</p> <p>14   X years, we had to adjust so much a year.</p> <p>15   And they asked for the egg industry, from my</p> <p>16   understanding, to come up with a schedule</p> <p>17   that would equalize it and allow everybody to</p> <p>18   grow into the specification.</p> <p>19    Q.   And what was the -- how much</p> <p>20   space per hen was Rose Acre using when Rose</p> <p>21   Acre joined the UEP?</p> <p>22    A.   When we joined?</p> <p>23    Q.   Yes.</p> <p>24    A.   We had some farms that was</p> <p>25   45 inches, some at 48, some at 53.</p>

43 (Pages 166 - 169)

<p style="text-align: right;">Page 170</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     Q.   And how much did that increase</p> <p>3   when you first joined the UEP in 2002?</p> <p>4     A.   I don't recall. How much did</p> <p>5   it -- again?</p> <p>6     Q.   How much did the space per hen</p> <p>7   increase?</p> <p>8     A.   Recollection immediately, none.</p> <p>9   But there was -- they have a schedule that</p> <p>10  you had to qualify for the program. They had</p> <p>11  hatch dates that any chicken you placed had</p> <p>12  to then, from that date forward, had to meet</p> <p>13  that new specification. And this was to</p> <p>14  allow producers to go in and built</p> <p>15  replacement housing to replace the housing</p> <p>16  that they needed for the birds that they took</p> <p>17  out of one house to make more space in other</p> <p>18  houses available to the chickens.</p> <p>19    Q.   So under the UEP Certified</p> <p>20  Program, the space per hen increased in</p> <p>21  steps. Is that correct?</p> <p>22    A.   It was done in steps so the</p> <p>23  producers would have the wherewithal to go</p> <p>24  out and -- if the whole United States</p> <p>25  tomorrow said we're going to 67 inches, we</p>	<p style="text-align: right;">Page 172</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2   these damn activists can't go and set our</p> <p>3   standard. We wanted a standard that everyone</p> <p>4   could live with.</p> <p>5     - - -</p> <p>6     (Exhibit 18, United Voices</p> <p>7   newsletter, Bates UE0753395 -</p> <p>8   UE0753407, was marked for</p> <p>9   identification.)</p> <p>10    - - -</p> <p>11  BY MR. ALLEN:</p> <p>12    Q.   Mr. Rust, I'm handing you what</p> <p>13  has been marked as Exhibit 18. Just a second</p> <p>14  ago you mentioned that if all egg producers</p> <p>15  had to move from the original cage space</p> <p>16  requirements to, or whatever they were using</p> <p>17  initially to 67 inches, there would be -- all</p> <p>18  at once, there would be a terrible egg</p> <p>19  shortage?</p> <p>20    A.   Correct.</p> <p>21    Q.   Why is that?</p> <p>22    A.   Because there's only so many</p> <p>23  available chicken houses. There's -- people</p> <p>24  don't build chicken houses, you don't spend</p> <p>25  \$15 or \$20 a chicken and then not put a</p>
<p style="text-align: right;">Page 171</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2   would have had a terrible egg shortage</p> <p>3   because 30 percent or 20 percent of the</p> <p>4   chickens in the country might have been taken</p> <p>5   out of the cages tomorrow.</p> <p>6     California is getting ready to</p> <p>7   go through this reg right now. January the</p> <p>8   1st in California, you have to go -- by HSUS</p> <p>9   standards you have to go to cage free in</p> <p>10  their mind. The producers out there have to</p> <p>11  go in their mind to 120 inches or whatever it</p> <p>12  is that they think the law means. And what</p> <p>13  happened in California and several other</p> <p>14  states, they've had what they call ballot</p> <p>15  initiatives where consumers go in and vote</p> <p>16  how much space we have to give our chickens.</p> <p>17  In California they made it to where everybody</p> <p>18  in the state now has to take all of the --</p> <p>19  they have to -- January the 1st they've got</p> <p>20  to yank maybe 40 percent, 50 percent of their</p> <p>21  chickens out of the cages on one day, they're</p> <p>22  no longer allowed to have them in there. The</p> <p>23  producers had no say so.</p> <p>24     We joined the UEP program so we</p> <p>25  could have a say so and get the rule set so</p>	<p style="text-align: right;">Page 173</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2   chicken in them. You have to borrow a lot of</p> <p>3   money to build a chicken house today. People</p> <p>4   don't want to make an investment in something</p> <p>5   they don't get their full capital out of.</p> <p>6     Q.   Why would those -- why would</p> <p>7   the change in cage space requirements require</p> <p>8   a new chicken house?</p> <p>9     A.   Because if you don't -- where</p> <p>10  would you put the chickens if you don't build</p> <p>11  a new house?</p> <p>12    Q.   Couldn't you satisfy the cage</p> <p>13  space requirements by simply removing the</p> <p>14  chickens?</p> <p>15    A.   Then you wouldn't have eggs to</p> <p>16  supply your customer.</p> <p>17    Q.   So is it because the egg -- you</p> <p>18  wouldn't have enough eggs to supply the</p> <p>19  customer?</p> <p>20    A.   Correct. That's why FMI asked</p> <p>21  the egg producers to come up with a plan that</p> <p>22  would allow a program to work so it didn't</p> <p>23  disrupt the marketplace.</p> <p>24    Q.   You wouldn't have enough eggs</p> <p>25  to supply your customers because if you just</p>



<p style="text-align: right;">Page 174</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2 removed the chickens from the existing house</p> <p>3 in order to satisfy the greater cage space</p> <p>4 requirements, there wouldn't be very many</p> <p>5 chickens in there, is that correct, at least</p> <p>6 as compared --</p> <p>7     A.   Repeat your question again, you</p> <p>8 lost me there.</p> <p>9     Q.   Sure. So you said that</p> <p>10 initially if the cage space requirements</p> <p>11 changed all at once, there would be an egg</p> <p>12 shortage?</p> <p>13     A.   Correct.</p> <p>14     Q.   Because chicken farmers would</p> <p>15 have to -- excuse me, egg producers would</p> <p>16 have to go out and build new laying houses.</p> <p>17 Correct?</p> <p>18     A.   Yes. We don't have enough</p> <p>19 money to do that.</p> <p>20     Q.   And I asked why, to satisfy the</p> <p>21 rules, the cage space requirements, an egg</p> <p>22 producer couldn't simply remove chickens from</p> <p>23 the existing houses? Why is that?</p> <p>24           MR. BARNES: Object to the form</p> <p>25 of that question.</p>	<p style="text-align: right;">Page 176</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2 Voices newsletter I handed you marked</p> <p>3 Exhibit 18, there is an article titled,</p> <p>4 "Market Value Comparisons" at the bottom of</p> <p>5 page 3. Do you see that?</p> <p>6     A.   Where it says, "Obesity</p> <p>7 Lawsuits"?</p> <p>8     Q.   Yes, at the bottom of that page</p> <p>9 it says, "Market Value Comparisons."</p> <p>10     A.   Okay.</p> <p>11     Q.   Do you see that?</p> <p>12     A.   Yes.</p> <p>13     Q.   Do you recognize this article?</p> <p>14     A.   Not particularly.</p> <p>15     Q.   On the next page, the article</p> <p>16 states, "Is there anyone who has not</p> <p>17 benefited from the industry's chick hatch</p> <p>18 reduction program? Not everyone has</p> <p>19 participated in the hatch reduction but most</p> <p>20 have benefited. Prior to meeting UEP's</p> <p>21 animal welfare guidelines a layer house now</p> <p>22 holding 95,200 layers at a house average of</p> <p>23 56 square inches per bird would have housed</p> <p>24 100,000 layers. So with this reduction of</p> <p>25 4,800 layers did a producer get paid back?</p>
<p style="text-align: right;">Page 175</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2           THE WITNESS: I'll state our</p> <p>3 position, I can't state other people's</p> <p>4 position.</p> <p>5 BY MR. ALLEN:</p> <p>6     Q.   Okay.</p> <p>7     A.   When you build a business all</p> <p>8 your life, you're not going to cut down your</p> <p>9 overall supply. I'd have to go out and pick</p> <p>10 out which customer I'm not going to take care</p> <p>11 of. We strive our business to take care of</p> <p>12 the customers at the highest price time of</p> <p>13 the year which is usually in the fall. We</p> <p>14 only make money four to eight months out of</p> <p>15 the year. We always lose money the balance</p> <p>16 of the year. There's nothing we can do about</p> <p>17 that. Because, you know, we have to have --</p> <p>18 we have these chickens for a two-year period.</p> <p>19 You will make money some months and you lose</p> <p>20 money other months. You know, we strive to</p> <p>21 produce the maximum amount we can out of that</p> <p>22 chicken space for the capital we invested in</p> <p>23 that henhouse.</p> <p>24     Q.   Mr. Rust, if you'll direct your</p> <p>25 attention to the third page of the United</p>	<p style="text-align: right;">Page 177</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2 Maybe we should not give the animal welfare</p> <p>3 guidelines all the credit but let's compare</p> <p>4 the results."</p> <p>5           In June 2002, a 100,000 layer</p> <p>6 house would have produced 1.8 million dozen</p> <p>7 at the Midwest Large quote of 70.25 cents per</p> <p>8 dozen. This same house, meeting UEP's</p> <p>9 guidelines and housing 95,200 layers which</p> <p>10 would have produced 1,713,600 dozen at a</p> <p>11 price of 81.90 cents per dozen in 2003. The</p> <p>12 net dollar difference just for one month is</p> <p>13 \$138,938.00.</p> <p>14           Did I read that correctly, Mr.</p> <p>15 Rust?</p> <p>16     A.   That's what it says.</p> <p>17     Q.   Don't you agree that this</p> <p>18 article is describing the certification</p> <p>19 program as a chick hatch reduction program?</p> <p>20           MR. BARNES: Object to the form</p> <p>21 of the question.</p> <p>22           THE WITNESS: Where does it say</p> <p>23 that?</p> <p>24 BY MR. ALLEN:</p> <p>25     Q.   Towards the top of page 4, the</p>

45 (Pages 174 - 177)



<p style="text-align: right;">Page 178</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     UEP is describing the article -- or excuse</p> <p>3     me, the certification program as the</p> <p>4     industry's chick hatch reduction program.</p> <p>5     MS. ANDERSON: Object to the</p> <p>6     form of the question. Misstated the</p> <p>7     document.</p> <p>8     THE WITNESS: I have no idea</p> <p>9     what that means, chick hatch</p> <p>10    reduction. Okay. He may have been</p> <p>11    identifying the hatch date of the UEP,</p> <p>12    the stepdown program that FMI</p> <p>13    requested to get to that square</p> <p>14    inches.</p> <p>15  BY MR. ALLEN:</p> <p>16    Q.   Which is part of the UEP</p> <p>17    Certified Program. Correct?</p> <p>18    A.   Correct.</p> <p>19    Q.   According to the example</p> <p>20    provided in this newsletter, the increase in</p> <p>21    cage space resulted in a reduction in</p> <p>22    production. Correct?</p> <p>23    MR. BARNES: Object to the form.</p> <p>24    THE WITNESS: For that given</p> <p>25    house, it would have.</p>	<p style="text-align: right;">Page 180</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     house, they're not going to lay eggs. We</p> <p>3     went out and built more houses. The whole</p> <p>4     design of the program was to allow a time</p> <p>5     period for you to replace the housing.</p> <p>6     That's what we did.</p> <p>7     Q.   But for Rose Acre's existing</p> <p>8     houses, when the cage space requirement goes</p> <p>9     up, production goes down. Is that right?</p> <p>10    A.   Unless you put more cages in</p> <p>11    the house. We have some houses where you</p> <p>12    take the cages out and put new cages in to</p> <p>13    make them hold more.</p> <p>14    Q.   Okay. Were those houses --</p> <p>15    A.   We did that, too, about, during</p> <p>16    the time of this program probably 15 or 20,</p> <p>17    30 houses where we actually just increased</p> <p>18    the number of hens in the space by adding</p> <p>19    more cages in that same confine of the</p> <p>20    building.</p> <p>21    Q.   So there was space in those</p> <p>22    buildings that just wasn't being used for</p> <p>23    cages initially?</p> <p>24    A.   We had -- no, we had -- the</p> <p>25    original equipment was in stacks of -- when I</p>
<p style="text-align: right;">Page 179</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     BY MR. ALLEN:</p> <p>3     Q.   Are there other houses,</p> <p>4     existing houses for which increased cage</p> <p>5     space would not reduce production?</p> <p>6     MR. BARNES: Object to the form.</p> <p>7     THE WITNESS: Repeat your</p> <p>8     question.</p> <p>9     BY MR. ALLEN:</p> <p>10    Q.   Are there laying houses where</p> <p>11    if the cage space requirement was increased,</p> <p>12    production would not go down?</p> <p>13    MR. BARNES: Object to the form.</p> <p>14    Calls for speculation.</p> <p>15    THE WITNESS: I'm still not</p> <p>16    understanding what you're asking</p> <p>17    because you're kind of twisting the</p> <p>18    words a little bit.</p> <p>19  BY MR. ALLEN:</p> <p>20    Q.   I'm probably not saying this</p> <p>21    clearly. Did Rose Acre have any laying</p> <p>22    houses where if the cage space requirement</p> <p>23    was increased, egg production would not</p> <p>24    decrease?</p> <p>25    A.   If you take chickens out of the</p>	<p style="text-align: right;">Page 181</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     say cages, the cages were, like, some of them</p> <p>3     were three high, some were four high. We</p> <p>4     would take those cages out and put in a</p> <p>5     system that was five high. And that allowed</p> <p>6     you -- you know, the house would either have</p> <p>7     more -- we actually -- we had houses where we</p> <p>8     gained, we went from 68,000 birds at</p> <p>9     48 inches that we had to go down to to get to</p> <p>10    the -- whatever the time -- we may been down</p> <p>11    to 50,000 birds or so in that house, but when</p> <p>12    we remodeled and put the new cages in, we</p> <p>13    went to 100,000 birds in that house. The</p> <p>14    design of the program was to allow producers</p> <p>15    to go in and remodel during the time period,</p> <p>16    you know, and to pay for the remodel, you had</p> <p>17    to make money. We -- someone just -- the</p> <p>18    consumers weren't just going to go give this</p> <p>19    money to go build chicken houses to make the</p> <p>20    animal rightists happy. And our program</p> <p>21    never made the animal rightists happy anyhow,</p> <p>22    so...</p> <p>23    Q.   Is it a significant project to</p> <p>24    renovate one of these laying houses?</p> <p>25    A.   It's a -- to renovate a chicken</p>

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2 house today is about a 12 -- can be \$12 to

3 \$13 per chicken experience for some types of

4 housing. Some types of housing if the

5 building is exact, perfect, it might only

6 cost you \$8 a bird. It varies in different

7 parts of the country. New housing in Arizona

8 might be \$15 per chicken. New housing in

9 Indiana where you've got to design for hot

10 and cold may be \$20 a chicken.

11     Q.   How many birds does a standard

12 Rose Acre laying house hold?

13     A.   Anywheres from 45,000 to

14 300,000. There is no real standard.

15 Everyone does different things for different

16 reasons.

17     Q.   So did Rose Acre's egg

18 production go down as a result of the UEP's

19 -- of the UEP program's cage space

20 requirements?

21     A.   No.

22     Q.   Was reducing egg production one

23 of the purposes of the UEP Certified Program?

24     A.   Not for us, it never was.

25     Q.   Do you know whether others,

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1     MARCUS RUST - HIGHLY CONFIDENTIAL

2 other members of the UEP believed that was

3 the goals?

4     MR. BARNES: Objection. Calls

5 for speculation.

6     THE WITNESS: I know there is

7 lots of companies who grew, some of

8 them grew faster than we did and have

9 added more birds than we have.

10 There's lots of -- some people have

11 went out of business. The egg market

12 can be a very cruel -- capitalism is

13 cruel. You know, you either survive

14 or you die. We're survivors yet.

15 Can't say we'll be always, people like

16 you.

17 BY MR. ALLEN:

18     Q.   Did you talk to other UEP

19 members who said that they joined the UEP

20 Certified Program because they were under the

21 impression that it would reduce production

22 and increase prices?

23     A.   Repeat your question again?

24     Q.   Did you talk to other members

25 of the UEP program that said that they joined

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1     MARCUS RUST - HIGHLY CONFIDENTIAL

2 the program because they were under the

3 impression that it would reduce egg

4 production and increase prices?

5     MR. BARNES: Object to form.

6     THE WITNESS: We only joined --

7 we were not a UEP player, per se.

8 They had organized lawsuits against

9 us. We only joined because our

10 customers required. What every other

11 producer, why they joined, I have no

12 idea. We had to join to maintain, we

13 owned, you know, 10 or 15, 20 -- 15

14 million chickens at the time or so

15 when we joined. We weren't going to

16 be part of a process that we didn't

17 have say so in what our future was

18 going to be. I had a very good friend

19 who stayed with me, from Germany, and

20 his family lost their entire business

21 because the legislatures over there

22 voted out cages. His family farm got

23 shut down. They had to go take all

24 their cages out, and they was in the

25 cage manufacturing business, had 4

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1     MARCUS RUST - HIGHLY CONFIDENTIAL

2 million chickens, you know. They had

3 to tear everything out and start over.

4 They didn't participate legislatively

5 nor as an industry together over

6 there. We joined UEP because it

7 looked like they was going to try to

8 fight this animal welfarism issue, you

9 know, and, you know, we drew lines in

10 the sand and said this is where we're

11 going then. You know, I have family

12 members that didn't like it. You

13 know, we're there.

14     - - -

15     (Exhibit 19, 6/1/05 UEP Shell

16 Egg Marketing Committee Conference

17 Call minutes, Bates RA0006999 &

18 RA0007000, was marked for

19 identification.)

20     - - -

21 BY MR. ALLEN:

22     Q.   Mr. Rust, I'm handing you

23 what's been marked as Exhibit 19, which is

24 the minutes of a Shell Egg Marketing

25 Committee conference call on June 1, 2005,

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1     MARCUS RUST - HIGHLY CONFIDENTIAL

2     Bates stamped RA0006999 through 7000.

3             This conference call was on

4     June 1, 2005. Is that correct, Mr. Rust?

5     A.    Yes.

6     Q.    According to the minutes.

7             The minutes show you as being

8     present. Correct?

9     A.    Yes.

10    Q.    Would you like to read the

11   minutes to familiarize yourself with the

12   document?

13    MR. BARNES: I think that's what

14   he's doing.

15    THE WITNESS: [Reviewing

16   document.] Okay.

17   BY MR. ALLEN:

18    Q.    The fourth paragraph up from

19   the bottom says, "Some felt that ACC

20   companies should speed up the phase-in

21   schedule for cage space while others said we

22   should not change the ACC schedule purely for

23   economic reasons."

24   A.    Yes.

25    Q.    Did I read that correctly?

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1     MARCUS RUST - HIGHLY CONFIDENTIAL

2     A.    Yes.

3     Q.    So did some members of the

4     Shell Egg Marketing Committee want to

5     accelerate the phase-in schedule?

6     A.    Some did. Some like myself did

7     not want to.

8     Q.    Those that did, did they want

9     to do so for economic reasons?

10    A.    Yes.

11    MS. LEVINE: Objection.

12    THE WITNESS: Usually they're

13   personal reasons. And the majority of

14   us felt that was wrong.

15   BY MR. ALLEN:

16    Q.    What economic reasons?

17    MR. BARNES: Object to the form.

18    MS. ANDERSON: Objection.

19    MS. LEVINE: Objection.

20   BY MR. ALLEN:

21    Q.    Why did they want to speed up

22   the phase-in schedule?

23    MR. BARNES: Same objection.

24    THE WITNESS: I have no personal

25   knowledge of each individual company.

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1     MARCUS RUST - HIGHLY CONFIDENTIAL

2     BY MR. ALLEN:

3     Q.    That wasn't discussed at this

4     meeting?

5     A.    Some of them said they were

6     losing lots of money, I guess.

7     Q.    And they were under the

8     impression that -- was it your understanding

9     that they wanted to increase the phase-in

10    schedule because doing so would make them

11   more money?

12    MR. BARNES: Object to the form.

13    MS. LEVINE: Objection.

14    THE WITNESS: It may have been

15   what they supposed, I don't know. It

16   wouldn't -- we weren't -- we were not

17   going to sit there and be part of

18   something if that is what they were

19   going to do.

20   BY MR. ALLEN:

21    Q.    Do you remember this meeting

22   specifically, Mr. Rust?

23    A.    I remember that discussion,

24   yes. I think it happened another time, too.

25   There have been several times -- or a couple

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1     MARCUS RUST - HIGHLY CONFIDENTIAL

2     of times that they wanted to speed -- or

3     someone would suggest they should move it up,

4     but that was not -- it was never, from our

5     perspective, a -- whatever they want to call

6     it, program. It was an Animal Welfare

7     Program, and the guidelines as placed in the

8     beginning should stay from point A to point B

9     the same for the square inches.

10    - - -

11    (Exhibit 20, 2/13/08 E-mail,

12   Bates RA0043711, was marked for

13   identification.)

14    - - -

15   BY MR. ALLEN:

16    Q.    I've handed you what's been

17   marked as Exhibit 20, Mr. Rust, which is an

18   e-mail that you sent to John Rust on

19   February 13, 2008.

20   A.    Let me read it here.

21   Q.    I'm sorry, this is from John

22   Rust to you, Bates stamped RA0043711.

23   A.    [Reviewing document.]

24   Q.    Have you read it, Mr. Rust?

25   A.    Yes.

<p style="text-align: right;">Page 190</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     Q.   So at the top of the e-mail it</p> <p>3   says that it's from John Rust. It was sent</p> <p>4   on Wednesday, February 13, 2008, to you, and</p> <p>5   the subject appears to be "piocs," I'm</p> <p>6   assuming that was pics and it was misspelled,</p> <p>7   or do you know what piocs means?</p> <p>8     A.   Just a second here. Okay.</p> <p>9   Pictures, yes.</p> <p>10   Q.   So his e-mail to you is in</p> <p>11   response to the e-mail that you sent on</p> <p>12   February 13, 2008, that's below. Correct?</p> <p>13   A.   Is a what again?</p> <p>14   Q.   That is below on this document.</p> <p>15   A.   Yes.</p> <p>16   Q.   So on the e-mail you sent on</p> <p>17   February 13, 2008, says, "when you look at</p> <p>18   the pics of your farm report you cannot help</p> <p>19   but like farms with cage free birds better --</p> <p>20   we are in a damnable war on that issue."</p> <p>21         Did I read that correctly?</p> <p>22   A.   Yes.</p> <p>23   Q.   And then he responded with the</p> <p>24   e-mail above on that same document saying,</p> <p>25   "Well, I know, that's why I think it is silly</p>	<p style="text-align: right;">Page 192</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     A.   That's what he wrote there,</p> <p>3   yes.</p> <p>4     Q.   Did you see this e-mail prior</p> <p>5   to your deposition, Mr. Rust?</p> <p>6     A.   Yes.</p> <p>7     Q.   Who is John Rust?</p> <p>8     A.   That is my brother. He lived</p> <p>9   out in New York for 11, 12 -- 10, 12 years.</p> <p>10   He's very big on cage -- he thinks birds</p> <p>11   should be cage free. He's not one of them,</p> <p>12   but he always feels that we should -- we</p> <p>13   built the cage, we should put as many</p> <p>14   chickens in it as possible and not worry</p> <p>15   about what it does to the chicken. He's very</p> <p>16   capitalistic and he thinks we should charge</p> <p>17   all we can for the cage free and produce all</p> <p>18   in a cage as much as we can.</p> <p>19         I want to keep the right to</p> <p>20   have chickens in the cages, because it's the</p> <p>21   best way to keep the chickens and keep it</p> <p>22   healthy and keep the consumer -- keep the egg</p> <p>23   healthy for the consumer. Any time you let</p> <p>24   chickens run free, you they can eat their own</p> <p>25   feces. You don't control the diet. When you</p>
<p style="text-align: right;">Page 191</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2   to have arguments about cage space per</p> <p>3   bird.... I don't think we have anything to</p> <p>4   be ashamed of by putting as many hens per</p> <p>5   cage as conditions permit as that is doing</p> <p>6   what is economically right for</p> <p>7   consumers...rather than trying to restrict</p> <p>8   cage space to boost prices under the alleged</p> <p>9   agenda of animal rights.</p> <p>10         "We lose the moral right to</p> <p>11   argue for the continued right of low cost</p> <p>12   production costs when we ourselves are</p> <p>13   manipulating the system under false</p> <p>14   pretenses."</p> <p>15         Should be caged birds and cage</p> <p>16   free, let the consumers pick....the cage</p> <p>17   density thing is morally wrong in my opinion</p> <p>18   and long term is going to give us a huge</p> <p>19   black eye with consumers who just want</p> <p>20   economical food.</p> <p>21         Correct?</p> <p>22   A.   Correct.</p> <p>23         MR. BARNES: Object to the form.</p> <p>24   BY MR. ALLEN:</p> <p>25   Q.   Did I read that correctly?</p>	<p style="text-align: right;">Page 193</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2   don't control the diet, you can't control the</p> <p>3   actual -- what's in that egg. You can get a</p> <p>4   lot more bacteria from free range eggs than</p> <p>5   you can from caged eggs. Multiple years ago,</p> <p>6   we got into a salmonella issue. That was,</p> <p>7   you know, when something like that happens,</p> <p>8   you don't want to go backwards on sanitary</p> <p>9   conditions going to cage -- cage free birds</p> <p>10   are not as sanitary as caged birds.</p> <p>11   Q.   What was John Rust's position</p> <p>12   at Rose Acre in 2008 when this e-mail was</p> <p>13   sent?</p> <p>14   A.   He was -- he done -- he would</p> <p>15   be doing -- at that time he was doing farm</p> <p>16   reports. He'd go around to the farms and</p> <p>17   look at them once every six months or so and</p> <p>18   if he saw something, he'd take pictures of</p> <p>19   it. He sent me some pictures of the cage</p> <p>20   free birds and how they're all running around</p> <p>21   looking happy.</p> <p>22   Q.   Is he your big brother or</p> <p>23   little brother?</p> <p>24   A.   Little brother. He was an art</p> <p>25   student. He designs all of our egg cartons,</p>

<p style="text-align: right;">Page 194</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2 or he did at one time.</p> <p>3     Q.   How long has he been in the egg</p> <p>4 business?</p> <p>5     A.   Probably for the last 10 or 15</p> <p>6 years. Prior to that, he spent a lot of time</p> <p>7 in New York.</p> <p>8     Q.   Does he still work for Rose</p> <p>9 Acre?</p> <p>10    A.   Yes.</p> <p>11    Q.   What's his current position?</p> <p>12    A.   He still does -- he don't do</p> <p>13 the farm walk, he had to have a hip replaced.</p> <p>14 He's down in Seymour, I'm up north. I'm not</p> <p>15 100 percent sure what he does on a daily</p> <p>16 basis. I know he opens the mail, I think he</p> <p>17 reads the mail. Trades the stock. I'm not</p> <p>18 sure 100 percent what he does.</p> <p>19    Q.   Does he have -- he doesn't have</p> <p>20 an official title, then, at Rose Acre?</p> <p>21    A.   Not any management activities,</p> <p>22 no. He's an owner.</p> <p>23    Q.   I'm sorry, go ahead.</p> <p>24    A.   He's an owner.</p> <p>25    Q.   He's an owner?</p>	<p style="text-align: right;">Page 196</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2 whenever you've had to spend lots of dollars</p> <p>3 on attorney fees -- you know. We got hauled</p> <p>4 into antitrust court by a bunch of UEP</p> <p>5 members, and they sued us because we were</p> <p>6 selling eggs too cheaply. We were, you know,</p> <p>7 growing our farms and building and they</p> <p>8 didn't like it.</p> <p>9     MR. BARNES: Counsel, excuse me.</p> <p>10    In order to perhaps shorten up this</p> <p>11 deposition, you had asked the witness</p> <p>12 if he responded to Exhibit 20 to his</p> <p>13 brother John's e-mail. He said he</p> <p>14 didn't recall. I have a Rose Acre</p> <p>15 document that contains his response.</p> <p>16 If you would like to use it, I'll be</p> <p>17 happy to give it to you, you can mark</p> <p>18 it and show it to the witness.</p> <p>19     MR. ALLEN: I'd actually like to</p> <p>20 take a break, Mr. Rust, if that's okay</p> <p>21 with you.</p> <p>22     VIDEOGRAPHER: This is end of</p> <p>23 tape two of the videotape deposition</p> <p>24 of Marcus Rust. We're off the record</p> <p>25 at 10:35.</p>
<p style="text-align: right;">Page 195</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     A.   Yes.</p> <p>3     Q.   Did you respond to this e-mail?</p> <p>4     A.   Yeah, I think I did. Maybe I</p> <p>5 didn't. I don't know. I don't recall.</p> <p>6     Q.   Did you have other discussions</p> <p>7 with John about his belief that the cage</p> <p>8 space requirements were an attempt to</p> <p>9 manipulate the market?</p> <p>10    A.   No, that's the only time I</p> <p>11 think I ever seen that.</p> <p>12    Q.   I'm sorry?</p> <p>13    A.   That's the only time I ever</p> <p>14 seen that.</p> <p>15    Q.   So you and he didn't discuss</p> <p>16 this issue at all after that?</p> <p>17    A.   There's various members of my</p> <p>18 family that have always had deep suspicions</p> <p>19 of -- our family is not very trusting of UEP,</p> <p>20 and that's because the lawsuits that got</p> <p>21 instigated many years ago, we always felt</p> <p>22 that it was based at us from some UEP</p> <p>23 meetings that took place because UEP's</p> <p>24 attorneys, Isaacson's was some of the first</p> <p>25 attorneys involved in the case. You know,</p>	<p style="text-align: right;">Page 197</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     - - -</p> <p>3     (A recess was taken.)</p> <p>4     - - -</p> <p>5     VIDEOGRAPHER: Here begins tape</p> <p>6 three in the videotape deposition of</p> <p>7 Marcus Rust. We're back on the record</p> <p>8 at 11:10.</p> <p>9     MR. BARNES: Can we have a</p> <p>10 statement by counsel for the DPPs that</p> <p>11 his examination of this witness is</p> <p>12 complete?</p> <p>13     MR. ALLEN: This is Matt Allen</p> <p>14 for the direct purchaser plaintiffs</p> <p>15 class. My examination is complete.</p> <p>16     MR. BARNES: Also, please let</p> <p>17 the record show that before the break</p> <p>18 I provided Mr. Allen with a complete</p> <p>19 copy of the e-mail chain, a portion of</p> <p>20 which is represented in Exhibit 20</p> <p>21 which he marked as an exhibit. This</p> <p>22 is the e-mail between Marcus Rust's</p> <p>23 little brother John and Marcus. And I</p> <p>24 provided counsel, all counsel with a</p> <p>25 copy of the complete e-mail chain</p>

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<p style="text-align: right;">Page 198</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     which does contain Mr. Rust's response</p> <p>3     to his brother. Since Mr. Allen</p> <p>4     decided not to mark the exhibit, I</p> <p>5     will do so when I have an opportunity</p> <p>6     to question Mr. Rust. I just want the</p> <p>7     record to reflect that. I'm sorry,</p> <p>8     Mr. Schirmer, go ahead.</p> <p>9     THE WITNESS: Correction.</p> <p>10    Little brother is bigger, just</p> <p>11    younger.</p> <p>12    MR. SCHIRMER: I promise -- I</p> <p>13    don't believe it's marked. I think</p> <p>14    it's interesting.</p> <p>15    - - -</p> <p>16    (Exhibit 30, Egg Industry</p> <p>17    articles, Bates RA0069754 - RA0069769,</p> <p>18    was marked for identification.)</p> <p>19    - - -</p> <p>20    EXAMINATION</p> <p>21    - - -</p> <p>22 BY MR. SCHIRMER:</p> <p>23    Q. I'm showing you what's been</p> <p>24    marked as Exhibit 30 for identification --</p> <p>25    for the purposes of identifying it here. It</p>	<p style="text-align: right;">Page 200</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     you saw this?</p> <p>3     A. No, I didn't.</p> <p>4     Q. Now, about how many hens does</p> <p>5     Rose Acre have in all your facilities right</p> <p>6     now?</p> <p>7     A. Approximately 22 million.</p> <p>8     Q. And if you look up in the upper</p> <p>9     left-hand corner, it says that "Marcus Rust,</p> <p>10    executive vice president of Rose Acre Farms,</p> <p>11    represents third generation of family-owned</p> <p>12    enterprise with over 22 million hens." Is</p> <p>13    that a correct statement?</p> <p>14    A. That's what it says there. I</p> <p>15    have no idea whether that was correct at the</p> <p>16    time this article was wrote or not.</p> <p>17    Q. Is it correct today, that you</p> <p>18    have over 22 million?</p> <p>19    A. Today, yes.</p> <p>20    Q. We'll come back to this.</p> <p>21    MR. SCHIRMER: Let's mark this</p> <p>22    as 31 and 31A. The e-mail should be</p> <p>23    31 and the attachment is 31A.</p> <p>24    - - -</p> <p>25    (Exhibits Exhibit 31, 7/25/07</p>
<p style="text-align: right;">Page 199</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     bears Bates numbers RA 0069754 through</p> <p>3     RA0069769. It's a relatively lengthy</p> <p>4     document. And, Mr. Rust, I won't be asking</p> <p>5     you about all of it, I will be asking you at</p> <p>6     a couple moments today about pages RA0069761</p> <p>7     and RA0069762.</p> <p>8     So why don't you have a look at</p> <p>9     those pages?</p> <p>10    A. Which one first?</p> <p>11    Q. 69761.</p> <p>12    MR. BARNES: On the bottom</p> <p>13    right-hand corner there.</p> <p>14 BY MR. SCHIRMER:</p> <p>15    Q. And I have to take my glasses</p> <p>16    off to read that. So why don't you have a</p> <p>17    look at that?</p> <p>18    A. [Reviewing document.] Okay.</p> <p>19    Q. These two pages.</p> <p>20    Sir, do you recall providing</p> <p>21    this interview to a reporter or writer from</p> <p>22    the egg industry?</p> <p>23    A. Vaguely.</p> <p>24    Q. During your preparation for</p> <p>25    your deposition today, do you recall whether</p>	<p style="text-align: right;">Page 201</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     E-mail, Bates RAUPDATE0013719 and</p> <p>3     Exhibit 31A, Chart, Bates</p> <p>4     RAUPDATE0013720 - RAUPDATE0013723,</p> <p>5     were marked for identification.)</p> <p>6     - - -</p> <p>7 BY MR. SCHIRMER:</p> <p>8     Q. These were produced</p> <p>9     sequentially. They bear Bates numbers</p> <p>10    RAUPDATE0013719, RAUPDATE0013720, 21 and 22</p> <p>11    and 23.</p> <p>12    What is Exhibit 31, sir?</p> <p>13    A. Let's see.</p> <p>14    Q. That's the e-mail.</p> <p>15    A. It says, "This is updated sales</p> <p>16    info. for Fiscal 2007 that...you might be</p> <p>17    interested in."</p> <p>18    Q. Do you recall receiving this</p> <p>19    e-mail?</p> <p>20    A. [Nods no.]</p> <p>21    Q. Do you know what Exhibit 31A</p> <p>22    is? Is that the attachment to Exhibit 31?</p> <p>23    A. This would be an egg sales</p> <p>24    total for fiscal year '77 through 2007 looks</p> <p>25    like.</p>

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<p style="text-align: right;">Page 202</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     Q.   Is this a -- to your knowledge,</p> <p>3   is this a document that reflects Rose Acre's</p> <p>4   total -- that reflects Rose Acre's egg sales</p> <p>5   from 1977 to 2007?</p> <p>6     A.   Evidently, yes.</p> <p>7     Q.   Do you know whether that's the</p> <p>8   case?</p> <p>9     A.   I would assume it would.</p> <p>10    Q.   As you're sitting here, do you</p> <p>11   have a recollection of receiving this</p> <p>12   document and this e-mail?</p> <p>13    A.   I can't say I have a</p> <p>14   recollection of receiving it, but it looks</p> <p>15   like something that we may have generated.</p> <p>16    Q.   I'd like you to look at</p> <p>17   something on page 1 of 31A.</p> <p>18    A.   Page 1 of 31A. Okay. Okay.</p> <p>19   That would be -- okay.</p> <p>20    Q.   Now, there is a fiscal year on</p> <p>21   the left, then it says, "Dozens Sold." Do</p> <p>22   you see that?</p> <p>23    A.   Correct.</p> <p>24    Q.   Now, under the "Dozens Sold,"</p> <p>25   is that all eggs or just shell eggs?</p>	<p style="text-align: right;">Page 204</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2   when you sold into exports under USEM?</p> <p>3     A.   We have, yes.</p> <p>4     Q.   You also -- did you sell liquid</p> <p>5   eggs when you sold exports?</p> <p>6     A.   Not -- we have not done liquid</p> <p>7   eggs export.</p> <p>8     Q.   Have you done powdered eggs in</p> <p>9   exports?</p> <p>10    A.   We have done powder eggs as</p> <p>11   exports, I think. Some, yes.</p> <p>12    Q.   From the -- is there -- when</p> <p>13   you sell eggs in export, in those USEM</p> <p>14   exports, is there a way to tell from looking</p> <p>15   at your commitment letter whether it's shell</p> <p>16   eggs or whether it's powdered eggs?</p> <p>17    A.   What are you calling the</p> <p>18   commitment letter?</p> <p>19    Q.   Well, there was the letter that</p> <p>20   was shown to you earlier that had a number</p> <p>21   of, I guess, it was cartons on it.</p> <p>22    A.   Yes. I think that was cases.</p> <p>23    Q.   Cases?</p> <p>24    A.   Yeah.</p> <p>25    Q.   Would it be --</p>
<p style="text-align: right;">Page 203</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     A.   That would be all eggs.</p> <p>3     Q.   Now, you said that Rose Acre --</p> <p>4   earlier today, I believe you said that Rose</p> <p>5   Acre is both a -- makes -- is both a shell</p> <p>6   egg producer and is also a dryer and breaker.</p> <p>7   Is that right?</p> <p>8     A.   Correct.</p> <p>9     Q.   What does that mean when you</p> <p>10   say a dryer and breaker?</p> <p>11    A.   We break eggs and then we dry</p> <p>12   eggs. So we sell pounds of powder eggs, we</p> <p>13   sell pounds of liquid eggs and we sell dozens</p> <p>14   of eggs.</p> <p>15    Q.   Now when you were engaged in</p> <p>16   the exports, you said earlier today, as I</p> <p>17   remember, that you participated in a number</p> <p>18   of exports as a member of the USEM.</p> <p>19    A.   Correct.</p> <p>20    Q.   Were you selling each of those</p> <p>21   kinds of eggs in export?</p> <p>22    A.   Each of?</p> <p>23    Q.   Well, you said shell eggs,</p> <p>24   liquid eggs and powdered eggs. I'm trying to</p> <p>25   short circuit it. Did you sell shell eggs</p>	<p style="text-align: right;">Page 205</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     A.   That would have been shell</p> <p>3   eggs.</p> <p>4     Q.   That would have been shell</p> <p>5   eggs. So if it says cases, that's shell</p> <p>6   eggs. And how would it be stated if it were</p> <p>7   powder eggs?</p> <p>8     A.   On a --</p> <p>9     Q.   On that kind of a form.</p> <p>10    A.   I don't recall seeing powdered</p> <p>11   eggs on one of those kinds of forms.</p> <p>12    Q.   To your knowledge, is this an</p> <p>13   accurate depiction of Rose Acre sales during</p> <p>14   this period of time?</p> <p>15    A.   That would be by fiscal year,</p> <p>16   that would be fairly accurate, shows what our</p> <p>17   gross has been through the year.</p> <p>18           MR. SCHIRMER: This will be</p> <p>19   number 32.</p> <p>20           - - -</p> <p>21           (Exhibit 32, Company History Web</p> <p>22   site printout, was marked for</p> <p>23   identification.)</p> <p>24           - - -</p> <p>25   BY MR. SCHIRMER:</p>

<p style="text-align: right;">Page 206</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     Q.   I'm showing you a document that</p> <p>3   has been marked as number 32. Do you</p> <p>4   recognize this?</p> <p>5     A.   The document, no.</p> <p>6     Q.   I'll submit that this is, if</p> <p>7   you look at the upper right-hand corner, a</p> <p>8   printout of the company history from About Us</p> <p>9   at www.goodegg.com which was printed out --</p> <p>10   A.   It was printed off of our Web</p> <p>11   site then.</p> <p>12   Q.   Do you recognize these pages</p> <p>13   from your Web site?</p> <p>14   A.   Yes.</p> <p>15   Q.   Now, would you, please, turn to</p> <p>16   the second page of this document.</p> <p>17   A.   Okay.</p> <p>18   Q.   Where it says, "Present Day</p> <p>19   Rose Acre is an industry-leader in egg</p> <p>20   production in 17 facilities in six states."</p> <p>21   A.   Yes.</p> <p>22   Q.   Those 17 facilities, are those</p> <p>23   separate farms?</p> <p>24   A.   Yes.</p> <p>25   Q.   Now, would -- do you account</p>	<p style="text-align: right;">Page 208</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2   location"?</p> <p>3     Q.   For example, you just listed</p> <p>4   three places. I'll get to it later. Strike</p> <p>5   it. I'll ask it later.</p> <p>6     You said something else earlier</p> <p>7   today that I thought was interesting. You</p> <p>8   said that Rose Acre continued to be --</p> <p>9   continued to produce eggs over the years</p> <p>10   you've been adding more and more houses. Is</p> <p>11   that right?</p> <p>12   A.   Yes.</p> <p>13   Q.   Has Rose Acre engaged in any</p> <p>14   acquisitions of other companies during that</p> <p>15   period of time?</p> <p>16   A.   Yes.</p> <p>17   Q.   As you're sitting here, can you</p> <p>18   remember any of the acquisitions Rose Acre,</p> <p>19   any companies Rose Acre acquired between 2002</p> <p>20   and 2008?</p> <p>21   A.   I can't remember the exact</p> <p>22   dates, but I can tell you the names of the</p> <p>23   companies that we've bought through the</p> <p>24   years.</p> <p>25   Q.   Please.</p>
<p style="text-align: right;">Page 207</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2   for those 17 separate farms as 17 different</p> <p>3   locations in your internal accounting?</p> <p>4     A.   Yes.</p> <p>5     Q.   Do you, for example, let me</p> <p>6   suggest, you have a location in Iowa. Is</p> <p>7   that right?</p> <p>8     A.   We've got three locations in</p> <p>9   Iowa.</p> <p>10   Q.   Three locations in Iowa. What</p> <p>11   are those locations, sir?</p> <p>12   A.   Guthrie Center Egg Farm, Stuart</p> <p>13   Egg Farm, Winterset Egg Farm.</p> <p>14   Q.   Do any of those egg -- those</p> <p>15   three egg farms comprise more than three</p> <p>16   physical -- more than one physical</p> <p>17   location -- strike that.</p> <p>18     Do any of those egg farms that</p> <p>19   you just mentioned in Iowa have more than one</p> <p>20   physical location?</p> <p>21   A.   No.</p> <p>22   Q.   Do you have any of your egg</p> <p>23   farms that have more than one physical</p> <p>24   location?</p> <p>25   A.   What do you mean by "physical</p>	<p style="text-align: right;">Page 209</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     A.   We've bought -- in Missouri, we</p> <p>3   bought Johnson County Egg Farm which was an</p> <p>4   egg farm of out of a bankruptcy court in Knob</p> <p>5   Noster, Missouri. We bought Lincoln County</p> <p>6   Egg Farm, we purchased that from the Schnucks</p> <p>7   grocery chain family. It was -- Schnucks</p> <p>8   grocery chain owned their own egg farm and</p> <p>9   they wanted to get out of the egg business so</p> <p>10   we bought their farm and then still supply</p> <p>11   them eggs today. And then we purchased</p> <p>12   the -- we have the Germantown Egg Farm which</p> <p>13   was in Germantown, Illinois. We have the</p> <p>14   County Line Egg Farm that we purchased which</p> <p>15   was in Frankfort, Indiana. We have the</p> <p>16   Donovan Egg Farm which we purchased which is</p> <p>17   in Donovan, Illinois. And we have the Oconee</p> <p>18   Egg Farm which is a farm that we bought from</p> <p>19   Johnny Jacobs, that we have in Georgia. We</p> <p>20   have the Canon Egg Farm that we bought in</p> <p>21   Georgia. And that is, the best of my</p> <p>22   recollection, all the egg farms that we</p> <p>23   bought.</p> <p>24   Q.   Have you ever bought a company</p> <p>25   called Crystal Farms?</p>

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<p style="text-align: right;">Page 210</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     A.   That's in Canon, Georgia, yes.</p> <p>3     Q.   That's the one that you called</p> <p>4     Oconee?</p> <p>5     A.   No.</p> <p>6     Q.   That's the Canon Farm?</p> <p>7     A.   Canon.</p> <p>8     Q.   Okay. That's Crystal Farm?</p> <p>9     A.   Both locations in Georgia were</p> <p>10   former egg farms, or former -- someone else</p> <p>11   started them.</p> <p>12   Q.   Okay. In the last -- let me</p> <p>13   mark this one as the next number. 33.</p> <p>14       - - -</p> <p>15       (Exhibit 33, 2/13/08 E-mail,</p> <p>16   Bates RAUPDATE0044348, was marked for</p> <p>17   identification.)</p> <p>18       - - -</p> <p>19       MR. BARNES: Is this my exhibit?</p> <p>20   We'll give you as many as you want.</p> <p>21   Thank you, Mark.</p> <p>22   BY MR. SCHIRMER:</p> <p>23   Q.   Now, earlier today you said</p> <p>24   that prior to becoming a member of the UEP</p> <p>25   Certified Program, you had chickens and eggs</p>	<p style="text-align: right;">Page 212</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     A.   Huh?</p> <p>3     Q.   So what did you do with those</p> <p>4     cages?</p> <p>5     A.   We kept -- we were actually --</p> <p>6   we kept putting chickens in them.</p> <p>7     Q.   Did you put the same number in</p> <p>8   them?</p> <p>9     A.   Through the years?</p> <p>10   Q.   Uh-huh.</p> <p>11   A.   Yeah. Until we tore them out</p> <p>12   and then we added more chickens in the same</p> <p>13   house.</p> <p>14   Q.   What about the -- how about the</p> <p>15   48-inch, did you have any problems -- were</p> <p>16   you having -- did you have problems, the same</p> <p>17   kind of mortality problems with the 48-inch</p> <p>18   cages?</p> <p>19   A.   You will. You'll have more.</p> <p>20   It's not really what you call a problem. You</p> <p>21   may -- you'll have -- when I -- it's viewed</p> <p>22   by animal rightists as a problem because, you</p> <p>23   know, you can have -- any time that you</p> <p>24   really squeeze the chickens at that 45, 48,</p> <p>25   anything under about 60 inches, from what</p>
<p style="text-align: right;">Page 211</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2   were given cage space of 45, 48 and</p> <p>3   53 inches. Is that right?</p> <p>4     A.   Yes.</p> <p>5     Q.   Why did you have -- give</p> <p>6   chickens those particular spaces?</p> <p>7     A.   Economic reasons at given</p> <p>8   times. The design -- some cages -- we had</p> <p>9   cages that was 12-inches-by-24-inches which</p> <p>10   the concept at the time allowed -- everything</p> <p>11   was about given them feed truck space. And</p> <p>12   then when I say it was 20 -- did I say</p> <p>13   24-by-20 or 24-by-12?</p> <p>14   Q.   I think 12-by-12.</p> <p>15   A.   That was what was called a</p> <p>16   reverse cage. And in a reverse cage, it was</p> <p>17   very narrow and chickens don't do well in</p> <p>18   those, or didn't do well, and we ended up, we</p> <p>19   had a lot of mortality in that design. It</p> <p>20   was designed at 45 inches. And we ended up</p> <p>21   from a mortality standpoint, you really</p> <p>22   couldn't put that many chickens in that</p> <p>23   little of a cage. You know, it's --</p> <p>24   Q.   So what did you do with those</p> <p>25   cages?</p>	<p style="text-align: right;">Page 213</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2   I've read through the years, you actually</p> <p>3   have more mortality than you will have at a</p> <p>4   greater square inch. Then if you give them</p> <p>5   too much room, then the opposite -- then you</p> <p>6   have more picking, where they pick each</p> <p>7   other. So it's kind of a -- there's a happy</p> <p>8   medium in there. You know, if you look at it</p> <p>9   like here it says, like, around 63 to 70.</p> <p>10   That's what we always determined to be a</p> <p>11   happy medium.</p> <p>12   Q.   In here, you're referring to</p> <p>13   Exhibit 33?</p> <p>14   A.   That is -- yes, that is the</p> <p>15   economic window of -- if he was balancing the</p> <p>16   bird health and something that you could,</p> <p>17   like in this, say I can defend this position,</p> <p>18   you know, somewhere in that range is one</p> <p>19   that's defensible.</p> <p>20   Q.   What was the mortality</p> <p>21   difference between 53 and 60 inches?</p> <p>22   A.   Exactly?</p> <p>23   Q.   Approximately.</p> <p>24   A.   A couple, 2, 3 percent is all.</p> <p>25   Q.   What kind of a difference did</p>

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<p style="text-align: right;">Page 214</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     that make in production?</p> <p>3     A.   Repeat your question?</p> <p>4     Q.   Between the 53 and the 60-inch</p> <p>5     cages, all other things being equal, do you</p> <p>6     have an understanding?</p> <p>7     A.   Well, that might be -- it can</p> <p>8     be five to ten eggs over the life of the</p> <p>9     chicken.</p> <p>10    Q.   And would the --</p> <p>11    A.   Whatever the percentages bear</p> <p>12    out.</p> <p>13    Q.   And the question I'm asking, I</p> <p>14    guess, is, did you find that for a given --</p> <p>15    for 53-inch cages, you were able to produce</p> <p>16    fewer eggs than you were able to produce at</p> <p>17    60 inches?</p> <p>18    A.   Repeat your question again?</p> <p>19    Q.   All other things being equal,</p> <p>20    if the cages are 53 inches versus 60 inches,</p> <p>21    given the mortality that you just --</p> <p>22    difference you just explained, is it your</p> <p>23    experience that 53 was less productive than</p> <p>24    60?</p> <p>25           MR. BARNES: Object to the form.</p>	<p style="text-align: right;">Page 216</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     going to have -- you know, you got a cheap</p> <p>3     building, there's a time if corn is cheap,</p> <p>4     you can get more eggs to that building than</p> <p>5     you can -- you can get more eggs, your</p> <p>6     economic revenue is going to be better</p> <p>7     totally squeezing the bird for your capital</p> <p>8     return. And there may be time periods you</p> <p>9     would look at it and say, well, if you think</p> <p>10    the market is going to be -- feed is going to</p> <p>11    be high, you wouldn't put as many chickens</p> <p>12    in. You would take a bird out, you know, you</p> <p>13    just wouldn't place as many, you know, in our</p> <p>14    forecast looking at where you thought the egg</p> <p>15    market was going to be.</p> <p>16           MR. BARNES: Excuse me. Mark,</p> <p>17           you didn't mark this 33?</p> <p>18           MR. SCHIRMER: I did.</p> <p>19           MR. BARNES: Oh, you did. Okay.</p> <p>20           MR. SCHIRMER: It's 33.</p> <p>21           MR. BARNES: Did you show it to</p> <p>22           him?</p> <p>23           MR. SCHIRMER: Yeah. He was</p> <p>24           talking about it just now.</p> <p>25           - - -</p>
<p style="text-align: right;">Page 215</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2           THE WITNESS: If you was making</p> <p>3           a chart and you wanted to prove that</p> <p>4           you was laying more eggs than anybody</p> <p>5           else per chicken, you would have in</p> <p>6           that mid 60s range versus the 50s.</p> <p>7    BY MR. SCHIRMER:</p> <p>8     Q.   What about in total, total</p> <p>9     production?</p> <p>10    A.   Are you going --</p> <p>11    Q.   Not per chicken, I'm talking</p> <p>12    about total production.</p> <p>13    A.   Total production of what, per</p> <p>14    chicken?</p> <p>15    Q.   Eggs.</p> <p>16    A.   Total production of eggs is 100</p> <p>17    percent dependent on how many chickens you</p> <p>18    have.</p> <p>19    Q.   And you could put more chickens</p> <p>20    if you give them 53 inches than 60?</p> <p>21    A.   You can get more egg out of a</p> <p>22    henhouse at 45 inches than you can at putting</p> <p>23    chickens in at 68 inches or 100 inches. What</p> <p>24    you have in the egg business is you have the</p> <p>25    best -- if you have an old house and it's</p>	<p style="text-align: right;">Page 217</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2           (Exhibit 34, Web site printout,</p> <p>3           was marked for identification.)</p> <p>4           - - -</p> <p>5           MR. SCHIRMER: This is going to</p> <p>6           be Exhibit 34.</p> <p>7    BY MR. SCHIRMER:</p> <p>8     Q.   Do you recognize what has been</p> <p>9     marked as Exhibit 34, sir?</p> <p>10    A.   Yes. I think this may be</p> <p>11    something off the Web site.</p> <p>12    Q.   If you look at the upper</p> <p>13    right-hand corner www.goodegg.com products --</p> <p>14    or /products/shell-eggs/commodity-eggs, is</p> <p>15    that your -- is www.goodegg.com --</p> <p>16    A.   It looks like it came off our</p> <p>17    Web site, yeah.</p> <p>18    Q.   You can see on the lower</p> <p>19    right-hand corner it was printed the day</p> <p>20    before yesterday.</p> <p>21    A.   Oh, okay. Yeah.</p> <p>22    Q.   In the -- when you look at</p> <p>23    page, at the -- it says page 2, I want to</p> <p>24    look at page 2 of 3. You say -- it says,</p> <p>25    "Rose Acre Farms Commodity Eggs." What are</p>

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<p style="text-align: right;">Page 218</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2 commodity eggs?</p> <p>3     A.   That would be just a white egg,</p> <p>4 white shell egg. We do brown eggs. We do</p> <p>5 nutritionally enhanced eggs. We do Eggland's</p> <p>6 Best eggs. And we do cage free eggs.</p> <p>7     Q.   Just a white egg, I'm not</p> <p>8 certain, a lot of eggs look white to me</p> <p>9 except for brown eggs.</p> <p>10    A.   Well, if you're in the</p> <p>11 Northeast, brown eggs are commodity eggs, but</p> <p>12 in Indiana, you don't see a lot of brown</p> <p>13 eggs.</p> <p>14    Q.   So how do you -- you have --</p> <p>15 strike that.</p> <p>16        Rose Acre has a number of</p> <p>17 facilities throughout the United States</p> <p>18 including North Carolina --</p> <p>19    A.   Correct.</p> <p>20    Q.   -- Iowa. Is the definition of</p> <p>21 commodity eggs the same throughout all Rose</p> <p>22 Acre's facilities?</p> <p>23    A.   The definition, I'm not</p> <p>24 following what you're asking.</p> <p>25    Q.   I just said what are commodity</p>	<p style="text-align: right;">Page 220</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2 that produce brown eggs, omega eggs,</p> <p>3 Eggland's Best and cage free eggs also</p> <p>4 produce white eggs?</p> <p>5     A.   The County Line and Germantown</p> <p>6 produce regular white eggs also. And</p> <p>7 Jen-Acres.</p> <p>8     Q.   Do you have an understanding of</p> <p>9 the approximate mix between white commodity</p> <p>10 eggs, omega and brown eggs at the County Line</p> <p>11 facility?</p> <p>12    A.   An approximate?</p> <p>13    Q.   Approximate.</p> <p>14    A.   Yeah. There'd be maybe 80,000</p> <p>15 birds of what we call Christopher egg which</p> <p>16 is a high omega. There'd be 80 to 100,000</p> <p>17 brown eggs there -- or brown chickens laying</p> <p>18 brown eggs.</p> <p>19    Q.   Would there be anybody there</p> <p>20 who would lay white eggs?</p> <p>21    A.   The balance to the farm would</p> <p>22 be white eggs. There was two buildings that</p> <p>23 got blown over by a tornado, they're no</p> <p>24 longer there.</p> <p>25    Q.   Sorry.</p>
<p style="text-align: right;">Page 219</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2 eggs and you said they're white eggs, just</p> <p>3 general white eggs, not Eggland's Best or</p> <p>4 brown. And then you said, well, maybe in the</p> <p>5 Northeast brown eggs would be commodity egg.</p> <p>6     A.   We produce brown eggs and we</p> <p>7 produce cage free eggs at our Donovan and</p> <p>8 Jen-Acres Plus Farms.</p> <p>9        COURT REPORTER: At our?</p> <p>10       THE WITNESS: Cage free and</p> <p>11 they're brown. We produce -- at our</p> <p>12 Jen-Acres and County Line location, we</p> <p>13 produce brown eggs in cages and we</p> <p>14 produce Eggland's Best eggs at our</p> <p>15 Germantown, Illinois facility. And we</p> <p>16 produce omega eggs which is a</p> <p>17 nutritionally enhanced egg at our</p> <p>18 County Line facility. And brown eggs</p> <p>19 there I think. Did I say that</p> <p>20 earlier? Yeah.</p> <p>21 BY MR. SCHIRMER:</p> <p>22    Q.   Do all these --</p> <p>23    A.   All the rest of the farms are</p> <p>24 just white eggs.</p> <p>25    Q.   Do these farms you just listed</p>	<p style="text-align: right;">Page 221</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2        Do you know what the balance</p> <p>3 would be?</p> <p>4    A.   What is that, 180 roughly?</p> <p>5    Q.   About 160.</p> <p>6    A.   There's about 500,000, 600,000</p> <p>7 birds there, so there'd be 3, 400,000 of the</p> <p>8 white ones.</p> <p>9    Q.   At the Germantown, Illinois, do</p> <p>10 you have an understanding of the approximate</p> <p>11 mix -- the approximate mix isn't correct, the</p> <p>12 approximate percentages of eggs of hens that</p> <p>13 are producing Eggland's Best and regular</p> <p>14 white eggs?</p> <p>15    A.   There'd be approximately 150 to</p> <p>16 250,000 doing the Eggland's Best. The</p> <p>17 balance would be just white conventional</p> <p>18 eggs.</p> <p>19    Q.   And approximately what is the</p> <p>20 balance?</p> <p>21    A.   Approximately 800,000. 700 to</p> <p>22 800,000. About a million birds there I</p> <p>23 think. 900,000.</p> <p>24    Q.   Is Donovan and Jen-Acres two</p> <p>25 facilities or one?</p>

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<p style="text-align: right;">Page 222</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     A.   Two.</p> <p>3     Q.   Taking those, at the Jen-Acres,</p> <p>4 you have a similar understanding of the</p> <p>5 approximate percentages of the specialty</p> <p>6 eggs, what we'll call specialty eggs versus</p> <p>7 the commodity white eggs?</p> <p>8     A.   Jen-Acres Plus is a facility of</p> <p>9 about 50 or 60,000 cage free. It's actually</p> <p>10 across the road. Actually listed as a</p> <p>11 separate facility. Jen-Acres is a facility</p> <p>12 that originally had a million and a half or</p> <p>13 so. Today there's maybe 900,000 there in</p> <p>14 total.</p> <p>15    Q.   Are those all commodity wide?</p> <p>16    A.   There's a couple, one house or</p> <p>17 two houses of about 40,000 birds, cage, brown</p> <p>18 that had to be put there when the tornado hit</p> <p>19 the County Line facility.</p> <p>20    Q.   Let me see if I understand. So</p> <p>21 Jen-Acres, not Jen-Acres Plus, has</p> <p>22 approximately 900,000 birds today?</p> <p>23    A.   Maybe a million total, the two</p> <p>24 farms.</p> <p>25    Q.   Of those, about 80,000 brown,</p>	<p style="text-align: right;">Page 224</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2 up as pullets. When we move them into our</p> <p>3 breeder farm, then we gather the hatching</p> <p>4 eggs from those breeders and take them to our</p> <p>5 hatchery and hatch them. And then they go</p> <p>6 from our hatchery to our pullet farms and</p> <p>7 then they're grown and go to the cage layer</p> <p>8 farm. That's what you call vertical</p> <p>9 integration. A lot of our competitors don't</p> <p>10 have hatcheries or their own breeders, they</p> <p>11 just buy chicks.</p> <p>12     MR. SCHIRMER: Mark this as 35.</p> <p>13 I'm going to have to -- I promise I'll</p> <p>14 make more copies. This is just a</p> <p>15 copy. This will be marked. This is</p> <p>16 another page off of your Web site, off</p> <p>17 of their Web site.</p> <p>18     - - -</p> <p>19     (Exhibit 35, Rose Acre Farms:</p> <p>20 Family-Owned With Small-Town Values</p> <p>21 article, was marked for</p> <p>22 identification.)</p> <p>23     - - -</p> <p>24 BY MR. SCHIRMER:</p> <p>25    Q.   Have you ever seen this before?</p>
<p style="text-align: right;">Page 223</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2 produce brown eggs?</p> <p>3     A.   I think that's the correct</p> <p>4 number, yeah.</p> <p>5     Q.   Now, the Donovan facility, what</p> <p>6 are the percentages of commodity eggs versus</p> <p>7 other types of eggs?</p> <p>8     A.   It's 100 percent cage free.</p> <p>9 It's 150, 180,000, something like that.</p> <p>10 Might even be 200,000. We've added some</p> <p>11 there.</p> <p>12    Q.   Now, if you look back onto</p> <p>13 Exhibit 34, you say you built your egg</p> <p>14 production around a vertical integration</p> <p>15 model. What's that mean?</p> <p>16    A.   Vertical integration is where</p> <p>17 we make the commitment, we built a hatchery</p> <p>18 and then we built breeder farms. And to</p> <p>19 get -- so when we -- to have, you know, they</p> <p>20 say what comes first, the chicken or the egg.</p> <p>21 You know, we buy a baby chick, female and</p> <p>22 males from a breeder company. Then we bring</p> <p>23 those baby chicks onto one of our facilities</p> <p>24 and we grow them up into what we call</p> <p>25 breeders. They start out as chicks, they end</p>	<p style="text-align: right;">Page 225</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     A.   Yes.</p> <p>3     Q.   What is it?</p> <p>4     A.   This is a page off of your</p> <p>5 redesigned Web site.</p> <p>6     Q.   On the first page it has a</p> <p>7 truck "ROSE ACRE FARMS The Good Egg People."</p> <p>8     A.   Yes.</p> <p>9     Q.   It's in color, I gave you a</p> <p>10 color copy.</p> <p>11    A.   Yeah.</p> <p>12    Q.   So I take it -- do you own</p> <p>13 these trucks?</p> <p>14    A.   Yes.</p> <p>15    Q.   You just explained that you</p> <p>16 have -- that the virtual integration is</p> <p>17 essentially you buy the chicks, you raise</p> <p>18 them. Do you have your own feed? I may have</p> <p>19 missed that. Do you have your own feed</p> <p>20 production?</p> <p>21    A.   We have our own feed mills.</p> <p>22    Q.   Do you -- what are the other</p> <p>23 inputs that go in? Do you have your own</p> <p>24 packaging service?</p> <p>25    A.   We have our own grading. We</p>

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<p style="text-align: right;">Page 226</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     have our own -- we do everything from the</p> <p>3     cheap, you know, the chicks cheaping to the</p> <p>4     squalor when you catch it to move it out of</p> <p>5     the building.</p> <p>6     Q.   Do you help customers design</p> <p>7     packaging?</p> <p>8     A.   We have done that at times,</p> <p>9     yes.</p> <p>10    MR. SCHIRMER: I will get more</p> <p>11    copies of this as well. This is going</p> <p>12    to be whatever the next number is.</p> <p>13    - - -</p> <p>14    (Exhibit 36, Web site printout,</p> <p>15    was marked for identification.)</p> <p>16    - - -</p> <p>17    BY MR. SCHIRMER:</p> <p>18    Q.   I'm showing you what's been</p> <p>19    marked as Exhibit 36. What is it?</p> <p>20    A.   Huh?</p> <p>21    Q.   What is it?</p> <p>22    A.   What's what?</p> <p>23    Q.   Number 36.</p> <p>24    A.   It's three pages off of our Web</p> <p>25    site I assume, so...</p>	<p style="text-align: right;">Page 228</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     A.   Could be.</p> <p>3     Q.   Could be any of the cage free</p> <p>4     organic?</p> <p>5     A.   Yeah.</p> <p>6     Q.   Any of those. Okay.</p> <p>7     Packer labels, you said that's</p> <p>8     another producer. I'm not certain I</p> <p>9     understand.</p> <p>10    A.   That would be another producer</p> <p>11    brand label.</p> <p>12    Q.   For example, who else would --</p> <p>13    A.   We pack eggs under -- I mean,</p> <p>14    molt -- any producer that's short eggs will</p> <p>15    pack their label if they want to.</p> <p>16    Q.   Who are some producers who you</p> <p>17    packed eggs for in the last five years?</p> <p>18    A.   Oh, boy. We -- that would be</p> <p>19    in their label or in their customer's label?</p> <p>20    Q.   Well, let's start with their</p> <p>21    label since it said packer labels.</p> <p>22    A.   Primarily would be maybe a</p> <p>23    Cal-Maine. I'm trying to think. Not a lot</p> <p>24    of producer labels left out there today. I'd</p> <p>25    say mainly -- probably Cal-Maine would be the</p>
<p style="text-align: right;">Page 227</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     Q.   That is your Web site, www --</p> <p>3     A.   Yes.</p> <p>4     Q.   Please look at page 2 of 3.</p> <p>5     A.   Okay.</p> <p>6     Q.   What does it mean -- what do</p> <p>7     you mean when -- what does it mean on the Web</p> <p>8     site when it says Rose Acre "As a</p> <p>9     full-service egg supplier"?</p> <p>10    A.   I guess that's our way of</p> <p>11    advertising we're a full service company.</p> <p>12    Q.   How does that differentiate</p> <p>13    from an egg supplier that is not a full</p> <p>14    service egg supplier?</p> <p>15    A.   I don't know how it would.</p> <p>16    It's kind of like bottled water, it all fell</p> <p>17    from the same sky.</p> <p>18    Q.   What are private and pack --</p> <p>19    what are private or packer labels?</p> <p>20    A.   That would be private -- packer</p> <p>21    label would be another producer's label. A</p> <p>22    private label would be an end user's label</p> <p>23    which would be like a Kroger, Wal-Mart.</p> <p>24    Q.   Now, private label, would</p> <p>25    private label eggs be cage free eggs?</p>	<p style="text-align: right;">Page 229</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     only one that we packed, that would be</p> <p>3     Cal-Maine carton. I'm sure there's been</p> <p>4     others. Hillandale maybe. I have to look at</p> <p>5     the records to see.</p> <p>6     Q.   Do you recall anyone else other</p> <p>7     than Cal-Maine and Hillandale that you would</p> <p>8     have packed going back for five years?</p> <p>9     A.   I'm sure there are others, I</p> <p>10    don't recall.</p> <p>11    Q.   You said something, just before</p> <p>12    we get into this, you said that you also will</p> <p>13    pack for their customers. Would those be</p> <p>14    considered packer?</p> <p>15    A.   That would be considered</p> <p>16    private label. If we pack Kroger for Midwest</p> <p>17    Poultry, that would be private label for</p> <p>18    another producer. They had a contract with</p> <p>19    that Kroger, but we might have packed the</p> <p>20    eggs for them -- for that.</p> <p>21    Q.   Didn't mean to speak over you,</p> <p>22    sir.</p> <p>23           So other producers sometimes</p> <p>24    come to Rose Acre and ask you to produce or</p> <p>25    pack eggs basically for their clients?</p>

<p style="text-align: right;">Page 230</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     A.    Yeah.</p> <p>3     Q.    And is the contract between you</p> <p>4   and the other producer or you and their</p> <p>5   customer?</p> <p>6     A.    It would be between us and that</p> <p>7   producer, but we have to in most cases be</p> <p>8   approved by the vendor to be a supplier for</p> <p>9   them.</p> <p>10    Q.    You mean approved by the</p> <p>11   purchaser to be a supplier for them?</p> <p>12    A.    Kroger, for instance, if Kroger</p> <p>13   is going to run an ad and they, like national</p> <p>14   chains, want to run national ads because of</p> <p>15   advertising costs and split overs, you know,</p> <p>16   from territories. When I say territories,</p> <p>17   from warehouse division to warehouse division</p> <p>18   to warehouse division. Kroger has got stores</p> <p>19   all over the Midwest. They want to run --</p> <p>20   when they run ads, they want to run an ad and</p> <p>21   advertise for a big area because it's</p> <p>22   overlapping in different types of TV or</p> <p>23   satellite, however they do their ad or</p> <p>24   newspapers. They may come from one</p> <p>25   warehouse, they may come from another, be in</p>	<p style="text-align: right;">Page 232</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2   projections. See, whenever you do eggs --</p> <p>3   whenever you're producing eggs, you have to</p> <p>4   do lots of internal projections because your</p> <p>5   customers buy different sizes of eggs. And a</p> <p>6   chicken, the first ten weeks that chicken</p> <p>7   goes into the house, it lays small eggs. The</p> <p>8   last 20 or 30 weeks of its life, it may lay</p> <p>9   extra large and jumbo eggs. Grocery store</p> <p>10   chains, typically they want mainly large</p> <p>11   eggs. All the recipes call for large. You</p> <p>12   know, cookie recipe don't call for jumbo. It</p> <p>13   says two large eggs in the recipe. So the</p> <p>14   consumers target and buy large. The egg</p> <p>15   producer has to figure out what to do with</p> <p>16   all of the small and mediums, what to do with</p> <p>17   the jumbos and extra large. And typically</p> <p>18   companies like ourselves, Midwest, we do what</p> <p>19   is called down packing. You know, it's we</p> <p>20   simply go to the extra large lane and put</p> <p>21   large cartons in and fill them up with extra</p> <p>22   large eggs. And consumers get big eggs</p> <p>23   instead of small eggs. That works great.</p> <p>24   And then after about six, eight weeks when</p> <p>25   the flock gets changed out and those large</p>
<p style="text-align: right;">Page 231</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2   the same general area. When they run that</p> <p>3   ad, they will use more eggs than what the</p> <p>4   farmer producer in that area that's filling</p> <p>5   that warehouse can supply. So Midwest might</p> <p>6   call us and say we're running an ad three</p> <p>7   weeks from now or two weeks from now, we need</p> <p>8   an extra ten loads of eggs. And then they'll</p> <p>9   make a contract with our sales office to</p> <p>10   produce those eggs for the given sale week</p> <p>11   when they run eggs on ad if they can't</p> <p>12   produce enough themselves.</p> <p>13   Q.    Are those contracts conditional</p> <p>14   on them being unable to supply themselves?</p> <p>15   A.    What do you mean?</p> <p>16   Q.    You said that Midwest might</p> <p>17   call you three weeks from now or two weeks</p> <p>18   from now and say we need an extra ten loads</p> <p>19   of eggs. They'll make a contract with you</p> <p>20   for the given sale week if they can't produce</p> <p>21   enough themselves.</p> <p>22   A.    Correct.</p> <p>23   Q.    Is that what they're projecting</p> <p>24   they won't have enough?</p> <p>25   A.    That means they run their</p>	<p style="text-align: right;">Page 233</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2   eggs are just barely large, she thinks her</p> <p>3   egg man -- her egg supplier is ripping her</p> <p>4   off because those eggs ain't as big as they</p> <p>5   used to be.</p> <p>6   Q.    When you have more -- I'll come</p> <p>7   back to that because I'm interested in that,</p> <p>8   but who are some suppliers or other companies</p> <p>9   that you have contracted with to provide</p> <p>10   private label or private -- we'll call them</p> <p>11   private label eggs for their customers. You</p> <p>12   mentioned Midwest might be --</p> <p>13   A.    The producers?</p> <p>14   Q.    Yes, who are other producers</p> <p>15   that you said to me today that you</p> <p>16   contracted --</p> <p>17   A.    Contracts.</p> <p>18   Q.    -- with producers?</p> <p>19   A.    We have no long-term contracts</p> <p>20   with any producers other than Cal-Maine.</p> <p>21   Q.    You have a long-term contract</p> <p>22   with Cal-Maine?</p> <p>23   A.    That would be for a year at a</p> <p>24   time.</p> <p>25   Q.    Who are some others that you've</p>

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<p style="text-align: right;">Page 234</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2 entered into short-term contracts with over</p> <p>3 the last, say, ten years?</p> <p>4     A.   I'm sure we have sold Hickman</p> <p>5 eggs. We had Hickman Farms in Arizona. We</p> <p>6 have sold eggs to Midwest Poultry. We</p> <p>7 probably have sold some eggs at times to</p> <p>8 Weaver in Ohio maybe, Hillandale in Ohio or</p> <p>9 Pennsylvania. We've sold eggs to Thompson</p> <p>10 Family Farm in Illinois. We have sold eggs</p> <p>11 probably to Moark. Every given producer</p> <p>12 given times of the year is going to be short</p> <p>13 or long depending on what their mix is and</p> <p>14 the size of the eggs that they're getting and</p> <p>15 what their customer demand is.</p> <p>16     Q.   And the contracts by which you</p> <p>17 engage, you make those sales to other</p> <p>18 producers -- or negotiated other producers'</p> <p>19 clients effectively for Kroger, you pack --</p> <p>20 pack them, I guess is correct?</p> <p>21         MR. BARNES: I'm going to object</p> <p>22 to the form.</p> <p>23         MR. SCHIRMER: You're probably</p> <p>24 right.</p> <p>25 BY MR. SCHIRMER:</p>	<p style="text-align: right;">Page 236</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2 sale on there and there will be X load of</p> <p>3 eggs for, say, a load a week for ten weeks.</p> <p>4 And then there will be a marketed -- based on</p> <p>5 what the market does or it could be a set</p> <p>6 price for ten weeks. Just whatever the buyer</p> <p>7 and seller would come to terms on.</p> <p>8     Q.   I'm clearly not being clear.</p> <p>9 I'm trying to understand the nature of these</p> <p>10 contracts.</p> <p>11     A.   There is no paper contract.</p> <p>12     Q.   There's no paper contract?</p> <p>13     A.   No.</p> <p>14     Q.   There's just simply an agreed</p> <p>15 upon price for delivery of certain number --</p> <p>16     A.   Electric form, electronically</p> <p>17 and just a listing. That's my understanding.</p> <p>18 It's just all done electronically on a</p> <p>19 computer.</p> <p>20     Q.   Going back to something, you</p> <p>21 said engaging in down packing, I'm not</p> <p>22 certain I understood what down packing is.</p> <p>23     A.   That's when you took extra</p> <p>24 large eggs and put them in a container that</p> <p>25 says large.</p>
<p style="text-align: right;">Page 235</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     Q.   The contract by which you pack</p> <p>3 private eggs for other producers, those are</p> <p>4 negotiated between --</p> <p>5     A.   It's not really a contract. A</p> <p>6 lot of them take place on something called</p> <p>7 Egg Clearinghouse which is like the board of</p> <p>8 trade type thing. Then sellers will put</p> <p>9 loads of eggs up for sale and buyers will put</p> <p>10 bids out there for bids of eggs they want to</p> <p>11 buy. And then there will be a guy there that</p> <p>12 will negotiate, either electronically put a</p> <p>13 price that you would sell it at or you could</p> <p>14 make a phone call and say, hey, I'll do this</p> <p>15 load for this. And then they negotiate it</p> <p>16 and you get paid by Egg Clearinghouse.</p> <p>17 That's the way a lot work. And then there's</p> <p>18 independent brokers who negotiate the sales</p> <p>19 in between, too.</p> <p>20     Q.   Those are physical contracts,</p> <p>21 not futures contracts? Those are physical</p> <p>22 contracts, contracts for physical delivery of</p> <p>23 eggs, not futures contracts?</p> <p>24     A.   Some of them they will go on</p> <p>25 ECI, you can make what they -- you can make a</p>	<p style="text-align: right;">Page 237</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     Q.   Is that permissible under --</p> <p>3     A.   Yes.</p> <p>4     Q.   When you have eggs -- you said</p> <p>5 also that consumers tend to want large eggs.</p> <p>6 Is there a -- strike that.</p> <p>7         Did you -- Rose Acre is a --</p> <p>8 does egg breaking and sells shell eggs.</p> <p>9     A.   Correct.</p> <p>10     Q.   When you have a number of eggs</p> <p>11 that are not large or extra large when you're</p> <p>12 down packing, what do you do with the other</p> <p>13 eggs, the medium, the smaller eggs?</p> <p>14     A.   What we do is a little</p> <p>15 different than other people. Whenever we</p> <p>16 want to break a lot of amount of eggs, we</p> <p>17 sell our large eggs always and we try to</p> <p>18 never break a large, we only break extra</p> <p>19 large and jumbo. Because lot of times you</p> <p>20 get no more money for that bigger egg and</p> <p>21 there will be three, four pounds of yield</p> <p>22 more out of that big egg in that for 30 dozen</p> <p>23 than there will be for large eggs. They're</p> <p>24 worth more to break than they are just</p> <p>25 straight.</p>

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<p style="text-align: right;">Page 238</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     Q.   Is that because when they're</p> <p>3 broken, they are priced by pound?</p> <p>4     A.   Correct.</p> <p>5     Q.   Do you use medium eggs or</p> <p>6 smaller eggs for breakers?</p> <p>7     A.   A lot of times those are what</p> <p>8 restaurants like to buy. Restaurants prefer</p> <p>9 medium eggs because it's a cheaper unit cost.</p> <p>10 When you go in the restaurant and you order</p> <p>11 two eggs, you're most likely going to get</p> <p>12 medium eggs because it costs the restaurant,</p> <p>13 say, 15 cents or 20 cents a dozen. You don't</p> <p>14 know any difference.</p> <p>15    Q.   When you eat as much as I do,</p> <p>16 you figure it out pretty soon.</p> <p>17    A.   That's why you order three.</p> <p>18    Q.   I always wondered why the --</p> <p>19    A.   Why you didn't get full at the</p> <p>20 restaurant and you did at home.</p> <p>21    Q.   -- big name breakfast is never</p> <p>22 big.</p> <p>23           But I may have -- may not have</p> <p>24 been clear in the last question.</p> <p>25           Does Rose Acre use any</p>	<p style="text-align: right;">Page 240</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2 sell all large. They don't try to sell extra</p> <p>3 large or jumbo, they'll put them in there and</p> <p>4 they price them and then they put a big price</p> <p>5 break between them. They don't sell enough</p> <p>6 of those because consumers want to buy large.</p> <p>7     Q.   Turn back to 34, what we</p> <p>8 previously marked as 34, that's commodity</p> <p>9 eggs. So when we're speaking of commodity</p> <p>10 eggs, it includes extra large, jumbo, large</p> <p>11 and medium eggs?</p> <p>12    A.   Jumbo, extra large, large,</p> <p>13 medium. I think there may be one or two</p> <p>14 customers that still buy small size.</p> <p>15    Q.   Those would be -- would also be</p> <p>16 included in the commodity eggs that you</p> <p>17 produce?</p> <p>18    A.   Correct.</p> <p>19           MR. SCHIRMER: We'll make more</p> <p>20 copies of this. This will be 37. For</p> <p>21 the people on the phone, this is off</p> <p>22 the front page www.goodegg.com.</p> <p>23           - - -</p> <p>24           (Exhibit 37, www.goodegg.com</p> <p>25 Printout, was marked for</p>
<p style="text-align: right;">Page 239</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2 substantial number of its medium eggs as</p> <p>3 breaker eggs?</p> <p>4     A.   Given times of the year.</p> <p>5 There's times of the year that it's -- we</p> <p>6 will actually buy medium eggs out on the</p> <p>7 outside market, and sometimes break our</p> <p>8 mediums. Not all of them, but, you know, we</p> <p>9 just -- we have to look at it and make a</p> <p>10 decision is it worth more to break or more to</p> <p>11 grade or can we sell it that week as graded</p> <p>12 or can we not.</p> <p>13    Q.   As I understood something, you</p> <p>14 can almost always sell all of your large</p> <p>15 eggs?</p> <p>16    A.   Yes, you can always sell all</p> <p>17 your large eggs. Large eggs are never ever</p> <p>18 produced in surplus than what is needed for</p> <p>19 the marketplace. Never. When I say that,</p> <p>20 let me clarify a little bit. Every producer</p> <p>21 in the country is down packing extra large</p> <p>22 eggs into large cartons and a lot of times of</p> <p>23 the year they'll fit jumbo into extra large.</p> <p>24 It's just you're always -- you know,</p> <p>25 consumers want -- the grocery stores want to</p>	<p style="text-align: right;">Page 241</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2 identification.)</p> <p>3           - - -</p> <p>4 BY MR. SCHIRMER:</p> <p>5     Q.   I'm showing you what's been</p> <p>6 marked as Exhibit 37. Do you recognize this?</p> <p>7     A.   Yes.</p> <p>8     Q.   What is it?</p> <p>9     A.   This here is a picture of a</p> <p>10 breeder farm.</p> <p>11    Q.   I'm sorry?</p> <p>12    A.   A breeder farm.</p> <p>13    Q.   What's that?</p> <p>14    A.   That is where we have breeders,</p> <p>15 where you produce the chicks. We produce the</p> <p>16 egg that goes to the hatchery that goes to</p> <p>17 the --</p> <p>18    Q.   And --</p> <p>19    A.   That's the start of a Rose Acre</p> <p>20 chicken.</p> <p>21    Q.   Okay. On the breeder farm --</p> <p>22 it doesn't look like these chickens are in</p> <p>23 cages, I understand it.</p> <p>24    A.   No. Breeders, they have to</p> <p>25 breed.</p>

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<p style="text-align: right;">Page 242</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     Q.   I figured.</p> <p>3     A.   Do you see the one with the fat</p> <p>4 cones? Those are the roosters.</p> <p>5     Q.   Yeah.</p> <p>6     A.   And the little cone ones are</p> <p>7 the hens.</p> <p>8     Q.   They got to get together.</p> <p>9     A.   Yeah. We have to provide lots</p> <p>10 of room for them to get together.</p> <p>11    Q.   So this would be considered</p> <p>12 cage free?</p> <p>13    A.   That would be cage free.</p> <p>14    Q.   Are your cage free facilities</p> <p>15 built along this type of model?</p> <p>16    A.   Some are.</p> <p>17    Q.   What other model would they be</p> <p>18 built on?</p> <p>19    A.   You have what you call an</p> <p>20 aviary.</p> <p>21    Q.   What's that?</p> <p>22    A.   That's where you stack multiple</p> <p>23 tiers of nest boxes up, and it's the modern</p> <p>24 way of getting lots of cage free birds</p> <p>25 together in a building so you can keep it</p>	<p style="text-align: right;">Page 244</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2 security mean?</p> <p>3     A.   That's where you -- bio</p> <p>4 security is where you're keeping your flock</p> <p>5 free from the diseases that the wild birds</p> <p>6 that are carrying outside. That's why cage</p> <p>7 free is never as good as caged, because you</p> <p>8 have much more disease pressure in cage free</p> <p>9 birds that are outside, they're what they</p> <p>10 call free range pasture eggs. When they're</p> <p>11 out with the wildlife, they can get lot more</p> <p>12 diseases than they can if they're inside a</p> <p>13 building and/or in a cage.</p> <p>14    Q.   In your buildings, do you have</p> <p>15 artificial lighting?</p> <p>16    A.   Yeah. The sun don't shine</p> <p>17 through the roof.</p> <p>18    Q.   Are there any windows in</p> <p>19 your cage facilities?</p> <p>20    A.   We have some that do and some</p> <p>21 that don't. In our caged or cage free?</p> <p>22    Q.   Caged.</p> <p>23    A.   We have -- we're some -- when I</p> <p>24 say windows, we have curtains that we go up</p> <p>25 and down in Georgia. Then you can see all</p>
<p style="text-align: right;">Page 243</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2 warm in the winter.</p> <p>3     Q.   So this is not an aviary?</p> <p>4     A.   Well, some would call it an</p> <p>5 aviary. It's a form of -- anything where the</p> <p>6 birds are running loose is an aviary.</p> <p>7     Q.   Do you happen to know which of</p> <p>8 your facilities this is?</p> <p>9     A.   This here? This would be</p> <p>10 either Storm Creek or Wood Acres.</p> <p>11    Q.   All this is done indoors?</p> <p>12    A.   Huh?</p> <p>13    Q.   All this, this is all indoors?</p> <p>14    A.   We allow no chicken to go</p> <p>15 outside.</p> <p>16    Q.   So that's true of whether</p> <p>17 they're cage free organic or cage, they stay</p> <p>18 inside?</p> <p>19    A.   We have to -- if a chicken has</p> <p>20 been outside, if it's been running loose or</p> <p>21 got loose, it has -- we have no bio security,</p> <p>22 you can't take that bird and bring it back</p> <p>23 in.</p> <p>24    Q.   For a guy who did not do</p> <p>25 terribly well in biology -- what does bio</p>	<p style="text-align: right;">Page 245</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2 the chickens right up there. But we only do</p> <p>3 that in the south. We don't do that in</p> <p>4 Indiana.</p> <p>5     Q.   How come?</p> <p>6     A.   Have you ever seen a frozen</p> <p>7 chicken, blue cone?</p> <p>8     Q.   Yes. Many times in the</p> <p>9 refrigerator.</p> <p>10    A.   Well, the same thing can happen</p> <p>11 out -- if you don't have walls up when it's</p> <p>12 20 below zero outside, you ain't going to</p> <p>13 have any chickens left.</p> <p>14    Q.   Let me make sure I understand.</p> <p>15 In some of your facilities in Georgia you</p> <p>16 have -- you don't have walls on your</p> <p>17 facilities?</p> <p>18    A.   Correct.</p> <p>19    Q.   How do you keep the chickens</p> <p>20 in?</p> <p>21    A.   There's wire.</p> <p>22    Q.   Wire?</p> <p>23    A.   Yes. Poultry netting. There's</p> <p>24 like one inch holes. You have to keep birds</p> <p>25 out, the chickens in.</p>

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<p style="text-align: right;">Page 246</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     Q.   Now, in that facility, why do</p> <p>3   you use curtains?</p> <p>4     A.   So when it does get cold in the</p> <p>5   winter, even in Georgia, or it can, so you</p> <p>6   roll the curtain up so the wind can't come</p> <p>7   in.</p> <p>8           - - -</p> <p>9           (Exhibit 38,</p> <p>10   www.desmoinesregister.com/article/</p> <p>11   20100829 Printout, was marked for</p> <p>12   identification.)</p> <p>13           - - -</p> <p>14  BY MR. SCHIRMER:</p> <p>15   Q.   I'm showing you what has been</p> <p>16   marked as Exhibit 38.</p> <p>17           There's a picture on the first</p> <p>18   page, it's an article from the Des Moines</p> <p>19   Register off the Des Moines Register Web site,</p> <p>20   www.desmoinesregister.com/article/20100829.</p> <p>21           MR. BARNES: I'm going to object</p> <p>22   to the use of this exhibit. It was</p> <p>23   presumably prepared August 28, 2010,</p> <p>24   which is outside the relevant time</p> <p>25   period which applies to your Complaint</p>	<p style="text-align: right;">Page 248</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2   implemented the -- all of the ACC guidelines</p> <p>3   on cage space. Is that right?</p> <p>4     A.   I'm not 100 percent sure, but I</p> <p>5   think maybe if you say so, it could be.</p> <p>6     Q.   If you looked at this right</p> <p>7   here, it's showing eggs coming down on a</p> <p>8   conveyor belt. In your facilities, are your</p> <p>9   facilities automated, heavily automated?</p> <p>10    A.   Very heavily automated. All</p> <p>11   are automated.</p> <p>12   Q.   What -- how many people work at</p> <p>13   it at an individual, I guess we'll call these</p> <p>14   chicken houses, because that's what KY</p> <p>15   Hendrix called them?</p> <p>16   A.   On a daily basis?</p> <p>17   Q.   On a daily basis.</p> <p>18   A.   Usually you'd have one person</p> <p>19   per building roughly if it's -- if you have</p> <p>20   200,000 birds, you'd have one person in that</p> <p>21   building. If you had 200,000 birdhouses,</p> <p>22   you'd have two houses for one person.</p> <p>23   Q.   Now, when -- you said that your</p> <p>24   facilities are highly automated. Could you</p> <p>25   explain how -- could you explain what you</p>
<p style="text-align: right;">Page 247</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2   and this litigation.</p> <p>3           MR. SCHIRMER: Okay. I'm still</p> <p>4   going to use it, see if it --</p> <p>5  BY MR. SCHIRMER:</p> <p>6   Q.   Do you know -- sir, do you know</p> <p>7   Andrew Kaldenberg?</p> <p>8     A.   Yes, he's one of our farm</p> <p>9   managers.</p> <p>10   Q.   The pictures on the front here,</p> <p>11   on the first page, is that a picture of Mr.</p> <p>12   Kaldenberg?</p> <p>13   A.   Yes, that's Andy.</p> <p>14   Q.   Is this at one of your</p> <p>15   facilities?</p> <p>16   A.   Yes.</p> <p>17   Q.   Do you know where the facility</p> <p>18   is?</p> <p>19   A.   That is the Stuart, Iowa</p> <p>20   facility.</p> <p>21   Q.   That would have been the</p> <p>22   facility as it was in 2010, obviously since</p> <p>23   this is 2010?</p> <p>24   A.   Yeah.</p> <p>25   Q.   By that point in time you had</p>	<p style="text-align: right;">Page 249</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2   mean by "highly automated"?</p> <p>3     A.   Well, like in this picture,</p> <p>4   you'll see the egg -- the chicken lays the</p> <p>5   egg, it rolls out onto the conveyor belt. We</p> <p>6   have some farms where that egg will never be</p> <p>7   touched again by a person. It will even</p> <p>8   package it, put it in the case, and then the</p> <p>9   robot picks the case up and stacks it on the</p> <p>10   skid when it's done.</p> <p>11   Q.   So the eggs go from the</p> <p>12   chicken --</p> <p>13   A.   The eggs can go from the</p> <p>14   chicken to the egg case and never be touched</p> <p>15   by a person.</p> <p>16   Q.   And between the chicken laying</p> <p>17   the eggs and rolling on this conveyor belt</p> <p>18   and getting out of the chicken house, what</p> <p>19   are the steps that come between that and the</p> <p>20   packaging?</p> <p>21   A.   The egg rolls out of the cage,</p> <p>22   rolls onto the egg belt. The egg belts</p> <p>23   carries it down to a collector. The</p> <p>24   collector accumulates the eggs and deposits</p> <p>25   them on a wider conveyor, of which you'll</p>



<p style="text-align: right;">Page 250</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     have eggs 20, 30 wide, will be moving X</p> <p>3     amount of feet per minute down to the egg</p> <p>4     washer, grader, goes to the washer, the eggs</p> <p>5     get washed and then it goes through the dryer</p> <p>6     which dries the wetness off. Then the eggs</p> <p>7     roll across the automatic crack detection,</p> <p>8     automatic blood detection, the automatic dirt</p> <p>9     removal. Then they roll across little scales</p> <p>10    and get -- each egg gets weighed by computer</p> <p>11    a thousand times to determine what the weight</p> <p>12    is. And then the computer selects which</p> <p>13    packing lane to drop the egg into off of</p> <p>14    another conveyor. And then that packing lane</p> <p>15    consolidates 12 eggs, puts them in a dozen</p> <p>16    package and then folds and closes and the</p> <p>17    carton comes out the back end. Some places</p> <p>18    you have machines that pack them into the</p> <p>19    cases, some places -- most of our places we</p> <p>20    still close by hand, and place in a case or</p> <p>21    place in a carton.</p> <p>22    Q.   Is that facility where the</p> <p>23    packages are placed into a carton, is that a</p> <p>24    different house or different building</p> <p>25    physically than the chicken house?</p>	<p style="text-align: right;">Page 252</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     Bates RASEYMOUR0000060767, was marked</p> <p>3     for identification.)</p> <p>4     - - -</p> <p>5     BY MR. SCHIRMER:</p> <p>6     Q.   I'm showing you what has been</p> <p>7     marked as Exhibit 39. It is -- it bears</p> <p>8     Bates number RASEYMOUR0000060767.</p> <p>9     MR. BARNES: Two-page document.</p> <p>10    MR. SCHIRMER: I don't know. I</p> <p>11    think so.</p> <p>12    MR. BARNES: I think there was a</p> <p>13    page in front of it, but I don't</p> <p>14    remember what the first page was.</p> <p>15    MR. SCHIRMER: I've never been</p> <p>16    able to find the front page.</p> <p>17    MR. BARNES: I think there was a</p> <p>18    page -- I've seen it with two pages.</p> <p>19    MR. SCHIRMER: I haven't seen</p> <p>20    it.</p> <p>21    BY MR. SCHIRMER:</p> <p>22    Q.   Have you seen this document</p> <p>23    before, sir?</p> <p>24    A.   Maybe, maybe not. I'm not</p> <p>25    sure.</p>
<p style="text-align: right;">Page 251</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     A.   Yes. It has to be.</p> <p>3     Q.   Why does it have to be?</p> <p>4     A.   Sanitary reasons. Those little</p> <p>5     dirt specs you see on eggs isn't dirt, it's</p> <p>6     poop.</p> <p>7     Q.   I'll remember that the next</p> <p>8     time I wash them.</p> <p>9     MR. SCHIRMER: Could we take a</p> <p>10    brief break?</p> <p>11    THE WITNESS: Sure.</p> <p>12    MR. SCHIRMER: Thank you.</p> <p>13    VIDEOGRAPHER: We are off the</p> <p>14    record at 12:13.</p> <p>15    - - -</p> <p>16    (A recess was taken.)</p> <p>17    - - -</p> <p>18    VIDEOGRAPHER: We're back on the</p> <p>19    record at 12:53.</p> <p>20    MR. SCHIRMER: Please mark this</p> <p>21    as the next exhibit, I believe it's</p> <p>22    39.</p> <p>23    - - -</p> <p>24    (Exhibit 39, Rose Acre Farms</p> <p>25    Square Inch Effects Summary Page,</p>	<p style="text-align: right;">Page 253</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     Q.   Would you have a look at it?</p> <p>3     Do you have an understanding as to what it</p> <p>4     shows?</p> <p>5     A.   Yes. I have an understanding</p> <p>6     to what it says.</p> <p>7     Q.   What is it?</p> <p>8     A.   This is a -- shows original</p> <p>9     capacity of each of the farms that we had at</p> <p>10    that time and then it shows what -- how the</p> <p>11    Animal Welfare Program square inch will</p> <p>12    affect those farms.</p> <p>13    Q.   Now, is this all the facilities</p> <p>14    you had at the time?</p> <p>15    A.   This does not have -- I don't</p> <p>16    see a date. Okay. It's dated 8/11 of 2002.</p> <p>17    Q.   2002, yeah.</p> <p>18    A.   This would have been what we</p> <p>19    owned that given time I think, yes.</p> <p>20    Q.   So after that time, you bought</p> <p>21    the Oconee?</p> <p>22    A.   Oconee Egg Farm.</p> <p>23    Q.   The County Line Egg Farm?</p> <p>24    A.   Germantown.</p> <p>25    Q.   And you constructed the Hyde</p>

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<p style="text-align: right;">Page 254</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     County Farm?</p> <p>3     A.    Yes.</p> <p>4     Q.    Now, when did you begin</p> <p>5     planning the construction of the Hyde County</p> <p>6     Farm?</p> <p>7     A.    I don't recall the exact date.</p> <p>8     It took us five years to get a permit. Maybe</p> <p>9     2000, 2001. 2002 maybe. Somewhere in that</p> <p>10    time range.</p> <p>11    Q.    Do you recall whether it was</p> <p>12    before or after you joined the UEP?</p> <p>13    A.    That was -- I don't recall, but</p> <p>14    it could have been before.</p> <p>15    Q.    Is there someplace -- is there</p> <p>16    something that you could look at that would</p> <p>17    refresh your recollection?</p> <p>18    A.    I'd have to look. We spent a</p> <p>19    lot of time fighting to get permits there,</p> <p>20    and I don't recall. I want to think that I</p> <p>21    was there whenever the Trade Center thing</p> <p>22    happened, but I could be wrong on that.</p> <p>23    Q.    That's September 11, 2001?</p> <p>24    A.    Yeah. That's my recollection.</p> <p>25    I could be wrong.</p>	<p style="text-align: right;">Page 256</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     A.    Yeah.</p> <p>3     Q.    What is it?</p> <p>4     A.    It's called "ROSE ACRE FARMS</p> <p>5     SQUARE INCH EFFECTS CONSOLIDATED SUMMARY PAGE</p> <p>6     BY FARM."</p> <p>7     Q.    And the first page which is</p> <p>8     RAUUPDATE0015948.</p> <p>9     A.    Which page?</p> <p>10    Q.    That's the first page of it.</p> <p>11    The e-mail on the front. It shows that you</p> <p>12    were one of the recipients of this e-mail --</p> <p>13    A.    Yes.</p> <p>14    Q.    -- and these particular</p> <p>15    attached documents?</p> <p>16    A.    Yes.</p> <p>17    Q.    Do you recall receiving these</p> <p>18    documents, sir?</p> <p>19    A.    I think so. I don't recall the</p> <p>20    specific documents, but I have no reason to</p> <p>21    say that I didn't.</p> <p>22    Q.    And your e-mail is</p> <p>23    marcus_rust@goodegg.com?</p> <p>24    A.    Yes.</p> <p>25    Q.    Who is Ty Harweger? I hope I</p>
<p style="text-align: right;">Page 255</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     Q.    So it took you approximately</p> <p>3     five years to get the permits?</p> <p>4     A.    Yeah.</p> <p>5     Q.    How long does it take to</p> <p>6     construct a facility like that?</p> <p>7     A.    It took -- I think it might</p> <p>8     have took four or five years. We ran out of</p> <p>9     money in the middle of it.</p> <p>10    Q.    Did you begin production before</p> <p>11    you had all the permits?</p> <p>12    A.    No.</p> <p>13    Q.    I'm showing you what has been</p> <p>14    marked as Exhibit -- what will be marked as</p> <p>15    Exhibit 40 then.</p> <p>16    - - -</p> <p>17    (Exhibit 40, 1/22/08 E-mail with</p> <p>18    attachment, Bates RAUUPDATE0015948 -</p> <p>19    RAUUPDATE0015951, was marked for</p> <p>20    identification.)</p> <p>21    - - -</p> <p>22    BY MR. SCHIRMER:</p> <p>23    Q.    This is a document bearing</p> <p>24    Bates stamp number RAUUPDATE0015948 through</p> <p>25    15951.</p>	<p style="text-align: right;">Page 257</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     got that right.</p> <p>3     A.    Ty is the -- he at the time was</p> <p>4     the Cort Acre Farm manager.</p> <p>5     Q.    Who is he now, does he have a</p> <p>6     different job now?</p> <p>7     MR. BARNES: He's still at the</p> <p>8     company.</p> <p>9     THE WITNESS: He has a different</p> <p>10    job. He's the southern Indiana</p> <p>11    regional manager.</p> <p>12    BY MR. SCHIRMER:</p> <p>13    Q.    Who is Anthony Rust?</p> <p>14    A.    My brother.</p> <p>15    Q.    What's -- does he have a title</p> <p>16    with the company?</p> <p>17    A.    He was at that time the flock</p> <p>18    manager.</p> <p>19    COURT REPORTER: The what?</p> <p>20    THE WITNESS: Flock manager.</p> <p>21    BY MR. SCHIRMER:</p> <p>22    Q.    Still doing it today?</p> <p>23    A.    He's a consultant to the flock</p> <p>24    department.</p> <p>25    Q.    James Rust?</p>

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<p style="text-align: right;">Page 258</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     A.   That's my brother.</p> <p>3     Q.   That's the bigger younger</p> <p>4 brother?</p> <p>5     A.   He is slightly bigger and</p> <p>6 taller and is in South America.</p> <p>7     Q.   Okay. Who is John Rust?</p> <p>8     A.   That is the taller, bigger</p> <p>9 brother, but younger.</p> <p>10    Q.   Younger.</p> <p>11       And Tony Wesner?</p> <p>12    A.   He is the chief operating</p> <p>13 officer of the company today.</p> <p>14    Q.   What was he at that time?</p> <p>15    A.   He would have been vice</p> <p>16 president in charge of logistics,</p> <p>17 transportation and environmental.</p> <p>18    Q.   Who is Greg Hinton?</p> <p>19    A.   He is vice president of sales.</p> <p>20    Q.   Does Mr. -- at the time did Mr.</p> <p>21 Hinton report to you?</p> <p>22    A.   Yes, he did.</p> <p>23    Q.   Is he still there today?</p> <p>24    A.   Huh?</p> <p>25    Q.   Is he still at Rose Acre today?</p>	<p style="text-align: right;">Page 260</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     Q.   What does that mean?</p> <p>3     A.   That would be the capacity at</p> <p>4 that given date, that hatch date.</p> <p>5     Q.   Is that approximately when Hyde</p> <p>6 County began to operate?</p> <p>7     A.   Yes. Yes.</p> <p>8     Q.   And Germantown, it shows, I</p> <p>9 guess, look at the week date, the same page,</p> <p>10 it has a week date of 01/28/04 and has</p> <p>11 512,810.</p> <p>12    A.   Correct.</p> <p>13    Q.   Is that when you first acquired</p> <p>14 the company, it had that kind of capacity?</p> <p>15    A.   When we bought the company,</p> <p>16 that may have been what the original capacity</p> <p>17 was. We added several houses to it.</p> <p>18    Q.   So is that approximately when</p> <p>19 you recall the company was purchased in or</p> <p>20 about?</p> <p>21    A.   That would be approximate.</p> <p>22    Q.   Oconee is not shown on the</p> <p>23 8/11/2002. That's RASEYMOUR, the last one is</p> <p>24 60767. It's the one in your right hand, I</p> <p>25 think. It's Exhibit 39. I don't see Oconee</p>
<p style="text-align: right;">Page 259</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     A.   Yes.</p> <p>3     Q.   What's his job today?</p> <p>4     A.   He's director of sales.</p> <p>5     Q.   I'm just comparing 39 and 40, I</p> <p>6 want to make sure I understand. So let's</p> <p>7 look at the RAF square inches summary</p> <p>8 January 2008.</p> <p>9     A.   Which page is this?</p> <p>10    Q.   It's on page --</p> <p>11    A.   Are we at 767 or at 949?</p> <p>12    Q.   94 -- 15950. Hold these</p> <p>13 together, I'm trying to understand them.</p> <p>14 Now, the Hyde -- it shows here the Hyde</p> <p>15 County original capacity is 626,362 in</p> <p>16 early -- as of apparently April 1, 2005, was</p> <p>17 the hatch date. And the week date is, I</p> <p>18 guess, July 29, 2005. Is that right? That's</p> <p>19 on page 15950.</p> <p>20    A.   It shows -- you're talking Hyde</p> <p>21 County?</p> <p>22    Q.   Yes, just Hyde County.</p> <p>23    A.   The 626,362?</p> <p>24    Q.   Yep.</p> <p>25    A.   What's the question on that?</p>	<p style="text-align: right;">Page 261</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2 on it.</p> <p>3     A.   Maybe we didn't own it yet</p> <p>4 then.</p> <p>5     Q.   That's exactly the question I</p> <p>6 was about to ask.</p> <p>7     A.   Maybe forgot it.</p> <p>8     Q.   Do you think it's likely you</p> <p>9 forgot something worth a million-five?</p> <p>10    A.   Hey, it happens.</p> <p>11    Q.   So do you remember</p> <p>12 approximately when you bought the Oconee</p> <p>13 Farm?</p> <p>14    A.   It was early -- 10, 12 years</p> <p>15 ago, I guess. Something like that.</p> <p>16    Q.   Sometime in -- it might have</p> <p>17 been in 2002?</p> <p>18    A.   It would have been the same</p> <p>19 time that we bought -- when we bought Nepco.</p> <p>20 Slightly thereafter.</p> <p>21    Q.   That's Newton County?</p> <p>22    A.   Nepco was an egg products</p> <p>23 company.</p> <p>24    Q.   Why would it be the same time,</p> <p>25 did you buy it from the same person?</p>

<p style="text-align: right;">Page 262</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     A.   No.</p> <p>3     Q.   Just around the same time?</p> <p>4     A.   We bought the chickens, the</p> <p>5 chickens in the building we bought from Tyson</p> <p>6 Foods. Tyson Foods owned Nepco. When we</p> <p>7 bought Nepco, we also bought their contract</p> <p>8 clause. And then that's when we added new</p> <p>9 chicken houses to the -- shortly thereafter</p> <p>10 we started construction and added new</p> <p>11 buildings at the contract farm, or at the</p> <p>12 farm that we bought from John Jacobs, which</p> <p>13 is the Oconee Egg Farm. When we bought it,</p> <p>14 it had 250,000 birds capacity. And then we</p> <p>15 added 800,000 or so to it.</p> <p>16    Q.   If you look at page number</p> <p>17 15950, the County Line Farm, you'll see that</p> <p>18 it looks like it came on line sometime in</p> <p>19 early 2004. Is that right?</p> <p>20    A.   Yes.</p> <p>21    Q.   That's approximately when you</p> <p>22 purchased it?</p> <p>23    A.   Yes. It and Germantown were</p> <p>24 purchased the same time.</p> <p>25    Q.   Do you know when at the time</p>	<p style="text-align: right;">Page 264</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2 on while you were at -- during the time</p> <p>3 you've been a part of UEP. Do you recall</p> <p>4 that discussion?</p> <p>5     A.   Yes.</p> <p>6     Q.   Were you a member of the Price</p> <p>7 Discovery Committee?</p> <p>8     A.   Yeah.</p> <p>9     Q.   Do you remember how long you</p> <p>10 were a member, for what period, over what --</p> <p>11         MR. BARNES: Over what period of</p> <p>12 time were you a member?</p> <p>13         MR. SCHIRMER: Thank you.</p> <p>14         THE WITNESS: I can answer that.</p> <p>15 BY MR. SCHIRMER:</p> <p>16    Q.   Yes, please.</p> <p>17         MR. BARNES: Go ahead.</p> <p>18         THE WITNESS: I was on it from,</p> <p>19 the best of my recollection, from</p> <p>20 about when it started or when we</p> <p>21 joined UEP till maybe it ended. I</p> <p>22 might have got off before that a</p> <p>23 couple years, I'm not sure. But I was</p> <p>24 on it -- I think I was on it most of</p> <p>25 the time.</p>
<p style="text-align: right;">Page 263</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2 you purchased County Line and Germantown, if</p> <p>3 those farms were ACC certified, certified</p> <p>4 producers?</p> <p>5     A.   I don't recollect.</p> <p>6     Q.   Is there anyplace I could go to</p> <p>7 find that out?</p> <p>8     A.   Germantown would have been for</p> <p>9 sure. I just don't recollect.</p> <p>10    Q.   Is there any way to know</p> <p>11 whether Oconee would have been -- the</p> <p>12 Oconee -- original Oconee producer would have</p> <p>13 been ACC certified at the time you purchased</p> <p>14 it?</p> <p>15    A.   It was all for egg products so</p> <p>16 it probably wouldn't have been.</p> <p>17    Q.   By which you mean not so many</p> <p>18 shell eggs?</p> <p>19    A.   It was for breaking only.</p> <p>20    Q.   That takes care of those. You</p> <p>21 can put those away and I promise we won't</p> <p>22 come back to it. At least not in my</p> <p>23 questioning.</p> <p>24         Earlier today Mr. Allen spoke</p> <p>25 to you about some of the committees you were</p>	<p style="text-align: right;">Page 265</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2 BY MR. SCHIRMER:</p> <p>3     Q.   What do you mean when it ended?</p> <p>4     A.   They quit having -- when all</p> <p>5 you guys filed suit, the attorneys went into</p> <p>6 panic and said let's not do this for a while</p> <p>7 until we figure out what's going on.</p> <p>8         MR. BARNES: Marcus, let me</p> <p>9 caution you, again, in response to any</p> <p>10 question from the plaintiffs, do not</p> <p>11 disclose any legal advice --</p> <p>12         THE WITNESS: Okay.</p> <p>13         MR. BARNES: -- that attorneys,</p> <p>14 UEP attorneys provided to you as a</p> <p>15 member of the board or a UEP</p> <p>16 committee, please. Okay?</p> <p>17         THE WITNESS: Okay.</p> <p>18 BY MR. SCHIRMER:</p> <p>19    Q.   There came a time after the</p> <p>20 lawsuit started that you stopped having a</p> <p>21 Price Discovery Committee. Is that correct?</p> <p>22    A.   Yes.</p> <p>23    Q.   Now, what did the Price</p> <p>24 Discovery Committee do? What was its</p> <p>25 purpose?</p>

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<p style="text-align: right;">Page 266</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     A.   They would have a meeting, they</p> <p>3 would sit around and talk about the</p> <p>4 projections that the different people in the</p> <p>5 egg industry had accumulated.</p> <p>6     Q.   Is that the Marketing Committee</p> <p>7 or the Price Discovery Committee?</p> <p>8     A.   They're both the same thing.</p> <p>9     Q.   So it was one committee, just</p> <p>10 two different names?</p> <p>11    A.   I think there's only one.</p> <p>12       MR. SCHIRMER: Going to be</p> <p>13 marking another exhibit, 41. Let her</p> <p>14 mark it first. Only two, guys, sorry.</p> <p>15       - - -</p> <p>16       (Exhibit 41, 12/7/05 UEP - Shell</p> <p>17 Egg Price Discovery Committee Minutes,</p> <p>18 Bates UE0153063 &amp; UE0153064, was</p> <p>19 marked for identification.)</p> <p>20       - - -</p> <p>21       THE WITNESS: Okay.</p> <p>22 BY MR. SCHIRMER:</p> <p>23    Q.   What is Exhibit 41?</p> <p>24    A.   It's what they call the Shell</p> <p>25 Egg Price Discovery Committee.</p>	<p style="text-align: right;">Page 268</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     A.   Urner Barry is kind of like a</p> <p>3 benchmark quote.</p> <p>4     Q.   So we can agree, then, that</p> <p>5 Urner Barry -- what is Urner Barry? Let's</p> <p>6 start there.</p> <p>7     A.   Urner Barry is a market</p> <p>8 reporting company that they do price sheets</p> <p>9 for the meat industry, the fish, poultry,</p> <p>10 beef, I guess seafoods. They publish a daily</p> <p>11 or weekly price check showing what the prices</p> <p>12 of the different commodities that aren't</p> <p>13 tracked by the Wall Street Journal. They're</p> <p>14 kind of a newspaper.</p> <p>15       MR. SCHIRMER: Exhibit 42.</p> <p>16       - - -</p> <p>17       (Exhibit 42, Newsletter, Bates</p> <p>18 KEL00003257 - KEL00003259, was marked</p> <p>19 for identification.)</p> <p>20       - - -</p> <p>21 BY MR. SCHIRMER:</p> <p>22    Q.   I'm showing you -- going to</p> <p>23 show you what's been marked as Exhibit 42.</p> <p>24 It's got Bates numbers KEL00003257 through</p> <p>25 3259.</p>
<p style="text-align: right;">Page 267</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     Q.   And the document is what with</p> <p>3 regard to the Shell Egg Price Discovery</p> <p>4 Committee?</p> <p>5     A.   It is a committee that they was</p> <p>6 talking about the cost of how Urner Barry --</p> <p>7 what the Urner Barry market was. They was</p> <p>8 talking about the processing carton and</p> <p>9 transportation cost.</p> <p>10    Q.   Is Exhibit 41 the minutes of a</p> <p>11 December 7, 2005, meeting of that committee?</p> <p>12    A.   Yes.</p> <p>13    Q.   And were you at that meeting?</p> <p>14    A.   I think I -- evidently I was.</p> <p>15 It says my name there, yes.</p> <p>16    Q.   Do you recall attending this</p> <p>17 meeting in Chicago in or about the end of --</p> <p>18 around the end of December 19 -- 2005, excuse</p> <p>19 me?</p> <p>20    A.   Vaguely. Kind of like from</p> <p>21 seeing this.</p> <p>22    Q.   Now, you said something just a</p> <p>23 second ago. It looked at the cost, the</p> <p>24 processing and how that was, I guess,</p> <p>25 translated into Urner Barry. Is that right?</p>	<p style="text-align: right;">Page 269</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     A.   Yes.</p> <p>3     Q.   What is it?</p> <p>4     A.   It's that daily or weekly,</p> <p>5 whenever it comes out, newsletter that I was</p> <p>6 telling you that lists the price of shell</p> <p>7 eggs. And if you had -- well, it's got like</p> <p>8 milk, butter. They used to have meat and</p> <p>9 stuff on it. I haven't looked at one in</p> <p>10 years. Yeah, down there they got the Urner</p> <p>11 Barry salmon market. They quote a market for</p> <p>12 the trade industry whether you're a producer</p> <p>13 and/or buyer, that people have a price sheet</p> <p>14 to look at. And then when we do a weekly</p> <p>15 target price, what we do is our contract with</p> <p>16 Kroger would say 20 cents under the Urner</p> <p>17 Barry large market or 18 cents under the</p> <p>18 medium market or 12 cents under the jumbo</p> <p>19 market for the eggs we sell. It's a</p> <p>20 benchmark that everybody uses to price their</p> <p>21 eggs off of.</p> <p>22    Q.   You just saved yourself</p> <p>23 20 minutes.</p> <p>24    A.   Okay.</p> <p>25    Q.   Would you, please, go back to</p>

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2 Exhibit 30 for just a minute?

3     A.   Exhibit, which one?

4     Q.   30. That was this document,

5 the interview.

6     A.   Okay.

7     Q.   The first one, okay. On the

8 right-hand side of RA0069761, about halfway

9 down the page, there is a question that says,

10 "EI: What changes do you see as a result of

11 higher feed cost?"

12         Do you see that question on the

13 page?

14     A.   Yes.

15     Q.   At the end of that paragraph,

16 it has after that, "MR."

17     A.   Right.

18     Q.   And in the last sentence, it

19 says, "It is evident that we also have to

20 control the supply of eggs since

21 over-production inevitably results in a drop

22 in realization."

23         Do you recall giving that

24 answer, at least that part of the answer to

25 that question, sir?

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1     MARCUS RUST - HIGHLY CONFIDENTIAL

2     A.   I don't recall that. I

3 remember -- I guess I remember reading this

4 or seeing this again.

5     Q.   You recall reading this or

6 seeing this, did you not say that?

7     A.   No, I'm not denying I said or

8 didn't say that. I'm just saying I remember

9 doing an interview for this report, I guess.

10     Q.   Does that -- did that statement

11 accurately reflect your view at the time?

12     A.   Still the same today.

13     Q.   Now, a little earlier today Mr.

14 Allen also discussed with you the Animal Care

15 Program, UEP Animal Care Program. Do you

16 recall that? We talked about it briefly.

17     A.   Which one?

18     Q.   The Animal Care Program. I'm

19 not going to ask you any more about that one.

20         I'm just asking you a general

21 question, do you recall the discussion?

22     A.   Which one?

23     Q.   About the Animal Care Program.

24     A.   Yeah.

25     Q.   And what is the UEP Animal Care

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1     MARCUS RUST - HIGHLY CONFIDENTIAL

2 Program?

3     A.   It is the Animal Welfare

4 Program that was implemented at the request

5 of the Food Marketing Institute, some of the

6 grocery chains.

7     Q.   Now, were you a member of UEP

8 when the UEP first appointed the Scientific

9 Advisory Committee to the UEP to formulate

10 their recommendations --

11     A.   I'd have to know what date that

12 was.

13     Q.   It was before 2002.

14     A.   I was not a member then, no.

15     Q.   Do you recall whether you were

16 a member of the UEP at the time that UEP

17 was -- that UEP's Producer Welfare Committee

18 was formulating the ultimate ACC Animal

19 Welfare Guidelines?

20     A.   I'd have to look at documents

21 to say if I was or wasn't.

22     Q.   You said that this was done at

23 the request of the Food Marketing Institute.

24     A.   That was our understanding.

25     Q.   What was your understanding

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1     MARCUS RUST - HIGHLY CONFIDENTIAL

2 based on?

3     A.   What Mr. Gregory told us.

4     Q.   And Mr. Gregory -- do you

5 recall when Mr. Gregory told you that?

6     A.   For multiple years they had

7 been trying to get us to join United Egg

8 Producers. It would have been one of those

9 recruitment meetings.

10     Q.   Was that -- is that something

11 that was important to you, who instituted the

12 Animal Care Program?

13     A.   Yes. Because their customers

14 want -- who demanded that we had to be in

15 that program, at the time that we got into

16 UEP was a time that we were being attacked by

17 animal rightist terrorist groups. We had one

18 facility that they sabotaged the water

19 system. Another facility that they took high

20 powered rifles and shot the electric

21 transformers out of the substation. Another

22 where they burnt the feed truck that we used.

23 We had feed mill there. Only one feed truck

24 fed all the chickens, actually a pretty new

25 truck, but they dumped diesel fuel on it and



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2 set in on fire and burnt it, burnt it up.

3 Then they spray painted on the side of the

4 building that the owner should be behind bars

5 like the chickens or in jail like the

6 chickens or in a cage, I don't remember,

7 whatever, they spray painted that on the side

8 of the mill. And then sometime during all

9 that, we was contacted by the FBI and said

10 that we was targeted for another group attack

11 on our facilities in Iowa. And at that point

12 in time, you know, we knew we was in a war

13 with animal rightist groups. And the grocery

14 store chains were being -- McDonald's, Burger

15 King had been, you know, I don't know if they

16 were attacked or they were picketed or

17 whatever, but they went and implemented,

18 saying they're going to give their chickens

19 more square inches. And McDonald's went out

20 at 75 inches or whatever it was, and then

21 Burger King come in and outdone them and went

22 at 80 inches or whatever it was. And then

23 some other chain announced even more. And

24 the supermarket industry went into a panic

25 because they didn't want to have every

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1     MARCUS RUST - HIGHLY CONFIDENTIAL

2 producer out there or every chain making

3 their own set of specifications because of

4 the long time period and commitment it took

5 to be an egg producer to get that large egg

6 that the supermarkets wanted the most of.

7     Q. You said the supermarkets went

8 into a panic. Who did you speak to at -- did

9 you speak to somebody at the Food Marketing

10 Institute about that?

11     A. It was stuff you read in

12 different -- you know, with all the animal

13 rights issues. No one wanted to be the

14 target of the animal rights people.

15 McDonald's didn't want picketers at their

16 restaurant. Kroger didn't want picketers out

17 there in the parking lot of their grocery

18 store from animal rights groups. Kraft, for

19 instance.

20     Q. Where did you read this about

21 the Food Marketing Institute? Other than

22 from Mr. Gregory, did you read anywhere the

23 Food Marketing Institute had been the impetus

24 behind the Animal Care Certified Program?

25     A. I think that was the main thing

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1     MARCUS RUST - HIGHLY CONFIDENTIAL

2 that I had heard was from Gene on that part.

3     Q. Now, you talked about the awful

4 things that happened to your company. Was

5 anybody ever prosecuted for those?

6     A. The person who burnt our feed

7 truck, I think he was -- he also burnt some

8 animal laboratories up in Michigan. And he

9 got caught and he actually then -- he had

10 posted on his Web site that he had done ours.

11 Whether he did or not, I don't know. But

12 they -- I think he got prosecuted for it and

13 he ended up serving several years for it.

14     Q. How about for the other things

15 that happened, anybody have a problem?

16     A. No one was -- they never placed

17 who shot the transformers. They never placed

18 who sabotaged the electrical. No one -- the

19 police come out and investigated, but I'm not

20 aware of any -- and the FBI for whatever

21 reason, they only warned us it was going to

22 happen, they didn't tell us who. I think

23 they know more than they tell us.

24     Q. Now, the Animal Care Program,

25 in general, what are the basic requirements

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1     MARCUS RUST - HIGHLY CONFIDENTIAL

2 of the Animal Care Program?

3     A. They have a lot of -- ask me

4 what you're asking again. You want to

5 know --

6     Q. I was trying to get your basic

7 understanding of the outline of what the

8 Animal Care Program requires you to do with

9 regard to your caged chickens.

10     A. They require -- you have to --

11 they have rules about how you do the

12 debeaking. They have rules about the

13 environment inside the chicken house. They

14 had handling rules. They had square inch

15 space rules that we had to phase in over a

16 time period. I'd have to look at documents

17 to see exactly what they were.

18     Q. Do you recall whether Rose

19 Acre -- Rose Acre's -- Rose Acre became a UEP

20 certified company in what, 2002 or

21 thereabouts?

22     A. We joined UEP so we could get

23 into the program. And that was, I think,

24 February of 2002. I think I saw it on a

25 document here someplace. And then we joined

<p style="text-align: right;">Page 278</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     the certified program four, five, six,</p> <p>3     eight months after that period where we</p> <p>4     had -- it took us a while to get our house in</p> <p>5     order, per se, to meet the qualifications of</p> <p>6     the program.</p> <p>7     Q.   At the time you joined the UEP</p> <p>8     was the only way you could become a UEP</p> <p>9     certified seller was to become a member of</p> <p>10    the UEP?</p> <p>11    A.   No.</p> <p>12    Q.   How else could you have done</p> <p>13    it?</p> <p>14    A.   You could have just went and</p> <p>15    signed up for the Animal Care Program and not</p> <p>16    been a UEP member.</p> <p>17    Q.   Why didn't you do that?</p> <p>18    A.   We didn't -- when you own 15</p> <p>19    million chickens, you don't want to sit</p> <p>20    around and let other people advise different</p> <p>21    people what's going to affect your facilities</p> <p>22    and how it's going to be done. You want to</p> <p>23    have control of what's going on. Or not</p> <p>24    control, but you want to have input on what's</p> <p>25    going on. We saw what happened in Europe.</p>	<p style="text-align: right;">Page 280</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     want that to happen here.</p> <p>3     Q.   And so I understand it, you</p> <p>4     were worried about legislation that might</p> <p>5     affect you in the same way it happened in</p> <p>6     Europe?</p> <p>7     A.   In Europe, the producers in</p> <p>8     Europe, because there was -- you got all the</p> <p>9     different countries, they ended up with a</p> <p>10    different set of rules in each country.</p> <p>11    Every country was different. So when the EU</p> <p>12    got formed, then they consolidated the rules</p> <p>13    and had a uniform code that stated all of</p> <p>14    them had to do certain things by certain</p> <p>15    dates. I think it was like 2010 or whenever.</p> <p>16    I forget what dates or years it was. But the</p> <p>17    producers there never got together and fought</p> <p>18    the animal rights groups. They effectively</p> <p>19    lost their right to have chickens in cages.</p> <p>20    Q.   When you say "fought," do you</p> <p>21    mean fought in the legislatures, lobbied?</p> <p>22    A.   Whether it's legislative or --</p> <p>23    the animal rights activists, you know, when</p> <p>24    they go after something, look what they do to</p> <p>25    people in fur coats in New York and different</p>
<p style="text-align: right;">Page 279</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     Q.   What happened in Europe?</p> <p>3     A.   Europe all -- 95 percent of all</p> <p>4     the eggs in the '70s and early '80s were all</p> <p>5     caged battery systems. Animal rights went</p> <p>6     after the -- groups went after the European</p> <p>7     producers, they burnt buildings, they did all</p> <p>8     the kind of stuff they was starting here.</p> <p>9     There was probably half a dozen, a dozen</p> <p>10    farms that got burnt down in Europe over the</p> <p>11    period of ten years or more or five years, I</p> <p>12    don't know, I don't remember the timing. But</p> <p>13    when those groups started coming over here,</p> <p>14    we saw the handwriting on the wall that we</p> <p>15    had to get active with an Animal Welfare</p> <p>16    Program so we didn't end up like Europe.</p> <p>17    They lost the right to have chickens in</p> <p>18    cages. The legislature actually voted it out</p> <p>19    in Germany, Denmark, Sweden, Norway, Austria,</p> <p>20    Switzerland. They're not allowed to have</p> <p>21    chickens in cages anymore. They're allowed</p> <p>22    to have what they call a colony cage in</p> <p>23    Germany, but those have to go to breaking.</p> <p>24    None of the retail chains will carry an egg</p> <p>25    that comes from a bird in a cage. We didn't</p>	<p style="text-align: right;">Page 281</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     places, you know, like throw mustard and</p> <p>3     mayonnaise or whatever at them on their fur</p> <p>4     coats, if they see women out walking with</p> <p>5     them in different places. They're always</p> <p>6     looking for things to create attention. That</p> <p>7     includes burning buildings down, burning</p> <p>8     animal laboratories down. You know, it's</p> <p>9     like burning our feed truck up. Why -- if</p> <p>10    you're animal rights, why would they burn a</p> <p>11    feed truck? That's what fed the animal.</p> <p>12    They shot out the transformer, that's what</p> <p>13    kept the electric. They just tried to</p> <p>14    create -- they wanted newspaper -- they want</p> <p>15    attention.</p> <p>16    Q.   What I'm trying to understand,</p> <p>17    perhaps I'm not doing so artfully, is you</p> <p>18    said you joined the UEP essentially to combat</p> <p>19    the animal rights advocates.</p> <p>20    A.   Yes.</p> <p>21    Q.   And I'm trying to understand</p> <p>22    what the UEP did that helped you combat the</p> <p>23    animal rights advocates.</p> <p>24    A.   Well, the UEP went and</p> <p>25    collected funds to help fight the ballot</p>

<p style="text-align: right;">Page 282</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2 initiative in California. California</p> <p>3 today -- January of 2015, California has to</p> <p>4 overnight give all of their chickens</p> <p>5 some say -- HSUS says cage free. No producer</p> <p>6 in California wanted the law that they got</p> <p>7 handed to them. They lost their right to be</p> <p>8 in the caged egg business in California</p> <p>9 according to HSUS. The California producers</p> <p>10 think they're going to be at 115, 16 inches.</p> <p>11 You know, in the last two months there have</p> <p>12 been several lawsuits filed by State Attorney</p> <p>13 Generals that are now filing suit against</p> <p>14 California for the laws that got passed out</p> <p>15 there by the voters there not allowing our</p> <p>16 eggs to go to California because they're</p> <p>17 coming from cages. You folks just don't</p> <p>18 understand what these animal activists are</p> <p>19 doing to us.</p> <p>20     Q. Do you have an understanding as</p> <p>21 to whether or not you will be able to sell</p> <p>22 eggs into California?</p> <p>23     A. We have no facilities today</p> <p>24 other than our cage free farms that will be</p> <p>25 able to ship eggs to California effective</p>	<p style="text-align: right;">Page 284</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2 passed a law that says -- the law that they</p> <p>3 stated says -- I think it's got a formula how</p> <p>4 many square inches, and it's about 115 or</p> <p>5 16 inches, that applies to out-of-state eggs.</p> <p>6 We tried to prevent that from happening. Our</p> <p>7 family, we spent, you know, hundreds of</p> <p>8 thousands of dollars in trying to keep that</p> <p>9 law off the ballot from getting passed. We</p> <p>10 lost the ballot initiative 70 percent to</p> <p>11 30 percent on the votes. Called Prop 2.</p> <p>12 You'll read it in your facts.</p> <p>13     Q. I'm showing you what is going</p> <p>14 to be marked as Exhibit 43.</p> <p>15     - - -</p> <p>16     (Exhibit 43, 8/7/08 E-mail,</p> <p>17 Bates RAUPDATE0020176 -</p> <p>18 RAUPDATE0020199, RAUPDATE0020201 -</p> <p>19 RAUPDATE0020205, RAUPDATE0020207,</p> <p>20 RAUPDATE0020209 &amp; RAUPDATE0020206, was</p> <p>21 marked for identification.)</p> <p>22     - - -</p> <p>23     MR. BARNES: All of this is 43?</p> <p>24     MR. SCHIRMER: I'll tell you --</p> <p>25 yeah. We can separate it out into</p>
<p style="text-align: right;">Page 283</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2 January the 1st of 2015.</p> <p>3     Q. It's your understanding that</p> <p>4 California requires eggs, wherever produced,</p> <p>5 to be produced without -- not to be produced</p> <p>6 in cages?</p> <p>7     A. They don't require -- not in</p> <p>8 cages. What they say is a chicken must be --</p> <p>9 you'll love this one. A chicken must be able</p> <p>10 to stand up, turn around, spread its wings</p> <p>11 and not touch another sidewall of a cage or</p> <p>12 another animal. Now, as long as your cage</p> <p>13 you put it in meets that specification, you</p> <p>14 can put chickens in that cage. If it doesn't</p> <p>15 meet that, you can pay a -- I think it's a</p> <p>16 \$500 or \$1,000 fine per occurrence.</p> <p>17     Q. It's your understanding that</p> <p>18 California has said that unless your egg</p> <p>19 production facilities, no matter where</p> <p>20 located, meet those criteria, you cannot sell</p> <p>21 eggs into California?</p> <p>22     A. Yes, they have passed a law to</p> <p>23 that effect.</p> <p>24     Q. Okay.</p> <p>25     A. Not -- let me restate. They</p>	<p style="text-align: right;">Page 285</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2 43A, B, C, D, if you'd like.</p> <p>3     MR. BARNES: It doesn't matter.</p> <p>4 I just wanted to make sure what we</p> <p>5 were marking.</p> <p>6     MR. SCHIRMER: I thought you'd</p> <p>7 object to me separating out a single</p> <p>8 document. That's all.</p> <p>9     MR. BARNES: Me?</p> <p>10     MR. MONICA: We're going to</p> <p>11 object either way.</p> <p>12     MR. SCHIRMER: Of course, I</p> <p>13 would expect no less.</p> <p>14 BY MR. SCHIRMER:</p> <p>15     Q. This bears Bates numbers</p> <p>16 RAUPDATE0020176, and I believe the last</p> <p>17 number is 209. But it contains, I think, all</p> <p>18 the documents.</p> <p>19     A. Mine is 206 at the end. 209 is</p> <p>20 second to the end.</p> <p>21     MR. BARNES: Yep, he's right.</p> <p>22     THE WITNESS: Does that one</p> <p>23 not -- does one of them not belong</p> <p>24 here?</p> <p>25 BY MR. SCHIRMER:</p>

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<p style="text-align: right;">Page 286</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     Q.   No. They both belong there. I</p> <p>3     just have them out of order probably. Let's</p> <p>4     see. Should I move it, put it in order,</p> <p>5     leave it where it is.</p> <p>6     A.   I'm just -- leave it where it</p> <p>7     is.</p> <p>8     Q.   Leave it where it is. It won't</p> <p>9     make any difference in this series of</p> <p>10    questions, I promise.</p> <p>11        What is this group of</p> <p>12    documents?</p> <p>13    A.   This would be a -- kind of a</p> <p>14    written manual. Whenever we hire people, we</p> <p>15    have to, you know, we have to train our</p> <p>16    employees in what the animal welfare rules</p> <p>17    and regulations that we maintain are. I</p> <p>18    think that's part of the UEP program that</p> <p>19    each company has to do.</p> <p>20    Q.   If you look at the first page</p> <p>21    of this document, RAUPDATE0020176, it is an</p> <p>22    e-mail from John Hurd to a number of</p> <p>23    individuals including --</p> <p>24    A.   It's David Hurd.</p> <p>25        MR. BARNES: It's not correct.</p>	<p style="text-align: right;">Page 288</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     above the system scheme or chart, whatever it</p> <p>3     is, there's a section that says, "Production</p> <p>4     System." Do you see that?</p> <p>5     A.   Yes.</p> <p>6     Q.   That's on page 20178.</p> <p>7     A.   Yes.</p> <p>8     Q.   The last sentence of that is</p> <p>9     "Contract farms are responsible for the care</p> <p>10    of RAF owned birds and therefore are under</p> <p>11    the same obligation to follow this welfare</p> <p>12    program and all UEP recommendations."</p> <p>13        Do you see that?</p> <p>14    A.   Yes.</p> <p>15    Q.   Does that mean that the</p> <p>16    contract farms must follow this program with</p> <p>17    regard to all their birds or just with regard</p> <p>18    to the birds owned by RAF?</p> <p>19    A.   That would only be if they was</p> <p>20    under a contract to us.</p> <p>21    Q.   If they are under contract with</p> <p>22    you, do the farms that are under contract --</p> <p>23    A.   We have no farms today under</p> <p>24    contract.</p> <p>25    Q.   At 2008 did you?</p>
<p style="text-align: right;">Page 287</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2        MR. SCHIRMER: David Hurd,</p> <p>3     sorry. You are correct, I screwed up.</p> <p>4    BY MR. SCHIRMER:</p> <p>5     Q.   David Hurd, to a number of</p> <p>6     individuals including you.</p> <p>7     A.   Yeah.</p> <p>8     Q.   Dated August 7, 2008. Do you</p> <p>9     remember receiving this document?</p> <p>10    A.   Not particularly. I get -- you</p> <p>11    get 50 e-mails or whatever a day, you</p> <p>12    don't --</p> <p>13    Q.   But you recognize this group of</p> <p>14    documents that are appended to it?</p> <p>15    A.   Yeah. Vaguely. I can't say</p> <p>16    I've read it verbatim.</p> <p>17    Q.   Who wrote -- do you know who</p> <p>18    wrote it?</p> <p>19    A.   I would assume David or KY</p> <p>20    maybe, I'm not sure.</p> <p>21    Q.   Do you know if this is the --</p> <p>22    please turn to the larger document that's</p> <p>23    RAUPDATE0020177. Please turn to that.</p> <p>24    A.   Okay.</p> <p>25    Q.   On the -- there's a -- right</p>	<p style="text-align: right;">Page 289</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     A.   I don't recall.</p> <p>3     Q.   When was the last time -- did</p> <p>4     you -- during the period of 2002 through</p> <p>5     2008, did you have farms that were under</p> <p>6     contract with you?</p> <p>7     A.   When we purchased the Canon Egg</p> <p>8     Farm and Nepco Farms in Georgia, both of</p> <p>9     those companies had contract farms, and we</p> <p>10    have since ended all those contract</p> <p>11    relationships.</p> <p>12    Q.   Do you know approximately when</p> <p>13    you ended those contract relationships?</p> <p>14    A.   I'd have to go back and look at</p> <p>15    records to see.</p> <p>16    Q.   You don't know as you're</p> <p>17    sitting here?</p> <p>18    A.   Not off the top.</p> <p>19    Q.   I just asked.</p> <p>20        MR. SCHIRMER: Why don't we stop</p> <p>21    now, about to end the tape, take a</p> <p>22    two-minute break.</p> <p>23        VIDEOGRAPHER: This is the end</p> <p>24    of tape three in the video deposition</p> <p>25    of Marcus Rust. We're off the record</p>

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<p style="text-align: right;">Page 290</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     at 1:38.</p> <p>3     - - -</p> <p>4     (A recess was taken.)</p> <p>5     - - -</p> <p>6     VIDEOGRAPHER: Here begins tape</p> <p>7     four in the videotape deposition of</p> <p>8     Marcus Rust. We are back on the</p> <p>9     record at 1:42.</p> <p>10  BY MR. SCHIRMER:</p> <p>11    Q.   Mr. Rust, please turn to that</p> <p>12    large document that we just were looking at.</p> <p>13    A.   Yes.</p> <p>14    Q.   Within it from -- it goes from</p> <p>15    177 to 199, 20177 to 199. We were just</p> <p>16    looking at page 2 of that document. On the</p> <p>17    lower right-hand corner it says page 2.</p> <p>18    RAUUPDATE0020177. That's where we were. I'd</p> <p>19    like you to turn to page 6 of that same</p> <p>20    document.</p> <p>21    A.   Yes.</p> <p>22    Q.   It bears the Bates number</p> <p>23    RAUUPDATE0020182. At the top, what does it</p> <p>24    say at the top of the page?</p> <p>25    A.   Hatchery.</p>	<p style="text-align: right;">Page 292</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     Q.   Yes, what does it say?</p> <p>3     A.   It says, "All chicks determined</p> <p>4     to be cockerels, unhatched embryos, and culls</p> <p>5     are disposed of by an approved euthanasia</p> <p>6     method. The euthanasia of these embryos and</p> <p>7     chicks must be done so that chicks are</p> <p>8     exposed to a minimum amount of stress."</p> <p>9     Q.   What are cockerels?</p> <p>10    A.   Male.</p> <p>11    Q.   What percentage of the males at</p> <p>12    your hatchery are euthanized?</p> <p>13    A.   If you believe in</p> <p>14    reincarnation, you don't want to come back as</p> <p>15    a rooster later.</p> <p>16    Q.   A large percentage of --</p> <p>17    A.   A large percentage.</p> <p>18    Q.   What are culls?</p> <p>19    A.   That would be a deformed chick</p> <p>20    and/or one that has got a bad leg or</p> <p>21    whatever.</p> <p>22    Q.   Now, see at the bottom of that</p> <p>23    it says, "See Hatchery Euthanasia</p> <p>24    Procedures."</p> <p>25    A.   Yes.</p>
<p style="text-align: right;">Page 291</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     Q.   If you could look under that</p> <p>3     section where it says, "Processing of chicks"</p> <p>4     there's a, b, c, d, and e. Do you see that?</p> <p>5     A.   Yes.</p> <p>6     Q.   c, what does c say, just the</p> <p>7     main topic c?</p> <p>8     A.   b?</p> <p>9     Q.   c as in cat.</p> <p>10    A.   It says, "Cockerel, Unhatched</p> <p>11    Embryo, and Cull Chick Euthanasia."</p> <p>12    Q.   Under that, what is -- what is</p> <p>13    number 1 under that?</p> <p>14    MR. BARNES: Object to the form.</p> <p>15    You want him to read it into the</p> <p>16    record?</p> <p>17    THE WITNESS: I don't have a 1,</p> <p>18    I've got an i.</p> <p>19  BY MR. SCHIRMER:</p> <p>20    Q.   Little i. Yes. On this --</p> <p>21    MR. SCHIRMER: Yes, I do this</p> <p>22    time.</p> <p>23    THE WITNESS: You want me to</p> <p>24    read it or something?</p> <p>25  BY MR. SCHIRMER:</p>	<p style="text-align: right;">Page 293</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     Q.   Now, further on in the</p> <p>3     document -- I'll show it to you so you can</p> <p>4     see it. It looks like this. It's</p> <p>5     RAUUPDATE0020207 and 208.</p> <p>6     A.   Okay.</p> <p>7     Q.   Is this the procedures that are</p> <p>8     being referred to on page 6?</p> <p>9     A.   I believe so.</p> <p>10    Q.   What is maceration?</p> <p>11    A.   That is, you have a -- it's</p> <p>12    kind of like a grinder, for lack of better</p> <p>13    words.</p> <p>14    Q.   And it says -- on this it says</p> <p>15    maceration is performed at the hatchery with</p> <p>16    rotating blades. So how does it work, do you</p> <p>17    just send -- do you feed the chicks, the</p> <p>18    cockerels, the culls and the embryos into</p> <p>19    that?</p> <p>20    A.   They have an air system that's</p> <p>21    designed to where you suck the live cockerels</p> <p>22    in this air tube and it -- they hit a dead</p> <p>23    plate. When they hit the dead plate, it</p> <p>24    kills the bird and then it falls down into</p> <p>25    the grinder to grind them up.</p>

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1     MARCUS RUST - HIGHLY CONFIDENTIAL

2     Q.   "Cervical Dislocation," what is

3   cervical dislocation?

4     A.   That's where you break its

5   neck.

6     Q.   On the next page, 2 -- 0020208

7   talks about modified atmosphere killing.

8   What's that?

9     A.   That is where you -- that's

10  where they would be killed using a can or

11  cart and then you put gas in and suffocate

12  them.

13    Q.   How does that work, are they

14  put in by hand?

15    A.   Yes, can be.

16    Q.   Any other way?

17    A.   Could be. I don't know.

18    Q.   Do you have personal knowledge?

19    A.   We have carts. You put them in

20  a cart and then you close the lid.

21    Q.   Turn to -- back to the

22  document 177 through 199.

23    A.   Okay.

24    Q.   And I'd like you to look at

25  Section 7 which starts on page

Page 295

1     MARCUS RUST - HIGHLY CONFIDENTIAL

2   RAUPDATE0020188 through 191. Specifically --

3   oh, right under where it says, "Section 7" on

4   0020188, the first sentence is "Breeder and

5   commercial layer farms at RAF are designed to

6   house laying hens throughout the productive

7   portion of their lifecycle." What is the

8   productive portion of their lifecycle?

9     A.   That can be from, anything from

10  16 weeks till the day they're dead. Depends

11  on the price of feed.

12    Q.   How long in general does Rose

13  Acre keep hens? How many weeks do you keep

14  the hens?

15    A.   We keep our hens until we have

16  new chicks coming. We keep our houses full.

17  We keep them as the egg market kind of

18  dictates, you know. You could adjust molting

19  time periods in between, you know, different

20  times through the market. But for the most

21  part, we make the decision to replace the

22  chicken once we have the new one coming to

23  replace it. We don't want empty space.

24    Q.   Approximately at how many weeks

25  -- how many weeks would be the maximum you

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1     MARCUS RUST - HIGHLY CONFIDENTIAL

2   would keep a laying hen for?

3     A.   You can keep them -- what we

4   do, what some people do?

5     Q.   What you do.

6     A.   We've had some flocks we sold

7   at 150, 160 weeks.

8     Q.   Now, after 150, 160 weeks, do

9   chicken still lay eggs?

10    A.   They can.

11    Q.   Why is -- why would you stop?

12  Why would you get rid of chickens at that

13  point?

14    A.   There's an economic return. It

15  depends on what the Urner Barry market may

16  be. If you've got customers on the Urner

17  Barry market, you would probably want to get

18  rid of them sooner. If you have a cost plus

19  market, you'd want to -- you may keep them as

20  long as they're paying for costs.

21    Q.   Why would -- if you got an

22  Urner Barry market, why would you want to get

23  rid of them sooner?

24    A.   If you're on -- Urner Barry

25  market goes up and down. The cost plus

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1     MARCUS RUST - HIGHLY CONFIDENTIAL

2   marketing, price stays the same. So you

3   got -- when you're a cost plus, you may elect

4   to keep them longer because you're getting --

5   you're going to make a profit irregardless of

6   when you sell them.

7     Q.   Would you turn to the next

8   page, it's 189, it's page 13 in this

9   document, RAUPDATE0020189. How do you

10  identify cull birds for euthanasia?

11    A.   It would be a bird that looks

12  like it was down. Like seen a person laying

13  in the street, in the gutter, you'd assume

14  that there's something wrong with them. You

15  know, you'd call an ambulance. When we see a

16  chicken that's laying down, we euthanize it.

17    Q.   And it says you use the

18  cervical dislocation procedure, you break

19  their necks?

20    A.   Yes.

21    Q.   That's done on an individual

22  basis?

23    A.   In an -- when you pick out and

24  cull a bird individually, you break its neck.

25    Q.   Please turn to the next page.

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<p style="text-align: right;">Page 298</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2           MR. SCHIRMER: Under -- for</p> <p>3     anybody who is still left on the phone</p> <p>4     after listening to me all day, that's</p> <p>5     page 14, RAUPDATE0020190. Page 14 of</p> <p>6     the document.</p> <p>7   BY MR. SCHIRMER:</p> <p>8     Q.   Do you see where it says,</p> <p>9     "Backfilling"?</p> <p>10    A.   Yes.</p> <p>11    Q.   It says, "Backfilling, or</p> <p>12    replacing birds, is only allowable following</p> <p>13    a catastrophic event."</p> <p>14           What is a catastrophic event?</p> <p>15    A.   Tornado, fire, disease, where</p> <p>16    you -- say a power outage, you have a bunch</p> <p>17    of birds dying and you have the house more</p> <p>18    empty than it would have been normally.</p> <p>19    Q.   Do you know whether during the</p> <p>20    period 2000-2008, that is the definition of</p> <p>21    catastrophic event that was used by Rose Acre</p> <p>22    Farms?</p> <p>23    A.   During what period?</p> <p>24    Q.   2000 to 2008.</p> <p>25    A.   I have no idea on the -- I'd</p>	<p style="text-align: right;">Page 300</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     Q.   So when you have birds of the</p> <p>3     same flock, it's not as big a problem?</p> <p>4     A.   Well, when you take the bird</p> <p>5     from one cage and put them in another cage,</p> <p>6     when you back -- there are birds in there.</p> <p>7     You know, they're not brothers and sisters.</p> <p>8     Every cage has a pecking order. And</p> <p>9     whatever, if you get one mean chicken in</p> <p>10    there, it may -- you throw three weak</p> <p>11    chickens in, it will peck those until it gets</p> <p>12    rid of them. That's why they wanted to</p> <p>13    eliminate backfilling.</p> <p>14    Q.   Do you know when that started?</p> <p>15    A.   I don't recall the exact dates.</p> <p>16    Q.   Please turn to the next page,</p> <p>17    RAUPDATE0020191, page 15 of this.</p> <p>18    A.   191?</p> <p>19    Q.   191. And it's page 19 of the</p> <p>20    Rose Acre Farms Animal Welfare Program. It's</p> <p>21    called "Load out." What does that mean?</p> <p>22    A.   That's when you're taking the</p> <p>23    birds out.</p> <p>24    Q.   It talks about -- would you,</p> <p>25    please, look at sub b under "Load out."</p>
<p style="text-align: right;">Page 299</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     have to see what the documents were at the</p> <p>3     time.</p> <p>4     Q.   Where it says, "Prior approval</p> <p>5     for backfilling must be submitted to UEP."</p> <p>6     That's at the bottom, it's the last bullet</p> <p>7     point.</p> <p>8     A.   During the -- sometime in that</p> <p>9     final period, there were rules that they</p> <p>10    changed on the backfilling because of what --</p> <p>11    there was complaints from, I think it was the</p> <p>12    scientific group, on the backfilling of birds</p> <p>13    in the cages.</p> <p>14    Q.   Do you know who the complaints</p> <p>15    were from?</p> <p>16    A.   It's -- you've heard the term</p> <p>17    "hand pecking order."</p> <p>18    Q.   Not what the nature of the</p> <p>19    complaints were.</p> <p>20    A.   It was chickens will kill each</p> <p>21    other.</p> <p>22    Q.   Is that because they're from</p> <p>23    different flocks and it changes the pecking</p> <p>24    order?</p> <p>25    A.   Yes.</p>	<p style="text-align: right;">Page 301</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     A.   Okay.</p> <p>3     Q.   It says, "Removal from cages."</p> <p>4     It says, "Birds are to be removed from cages</p> <p>5     as stated in the bird handling the</p> <p>6     procedure." So this -- you have bird</p> <p>7     handling procedure for moving birds?</p> <p>8     A.   Yes.</p> <p>9     Q.   Then it says, "Houses being</p> <p>10    euthanized at move out should follow mass</p> <p>11    depopulation procedures."</p> <p>12           Is that right?</p> <p>13    A.   Yes.</p> <p>14    Q.   Is mass depopulation</p> <p>15    procedures --</p> <p>16    A.   That's using gas versus hand</p> <p>17    breaking.</p> <p>18    Q.   That's the gas. Okay.</p> <p>19    A.   It's not really gas. It's CO2.</p> <p>20    Q.   Carbon dioxide?</p> <p>21    A.   Yes.</p> <p>22    Q.   It says, "If birds are removed</p> <p>23    from cages with excessive force, damage to</p> <p>24    meat could cause plant condemnations..."</p> <p>25           What does that mean?</p>

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1     MARCUS RUST - HIGHLY CONFIDENTIAL

2     A.   Some of the birds that's

3   going -- still going to a killing plant where

4   they were processing birds, then making

5   chicken patties for the school lunch program.

6     Q.   Is that what it means, is that

7   what it -- it talks about transport, is that

8   a rendering plant?

9     A.   No.

10    Q.   What's a rendering plant?

11    A.   A rendering plant would be a

12   plant that makes animal feed out of a

13   chicken.

14    Q.   And processing -- the

15   processing is -- a process plant is what?

16    A.   That is a plant that is making

17   food for human consumption.

18    Q.   So the goal, what you do is you

19   take the birds, all of the birds out at one

20   time?

21    A.   Yes.

22    Q.   And you just -- you put them --

23   give them the CO2 and it kills them as a

24   group?

25    A.   Some of them. If you're doing

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1     MARCUS RUST - HIGHLY CONFIDENTIAL

2   that, yes.

3     Q.   I notice that on the next page

4   you also have a section, starting on the next

5   page on "Cage Free Commercial Layer and

6   Breeder Farms." So you also have separate

7   guidelines for your cage free farms. Is that

8   right?

9     A.   I don't think so.

10    Q.   Is that just for the layer and

11   breeder farms?

12    A.   Maybe they're the same, I'm not

13   sure. Let me look here. Okay. Cage free

14   commercial layer and breeder farms. They're

15   about the same, I guess.

16       MR. SCHIRMER: Please mark this

17       with whatever the next number is.

18       - - -

19       (Exhibit 44, 11/26/07 E-mail,

20       Bates RA0041257 & RA0041259, was

21       marked for identification.)

22       - - -

23   BY MR. SCHIRMER:

24    Q.   I'm showing you what has been

25   marked as Exhibit 44 which was previously

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1     MARCUS RUST - HIGHLY CONFIDENTIAL

2   marked, as I'm certain Donald will recall, at

3   Bryan Hendrix's deposition as DPP-28, bears

4   RA -- Bates numbers RA0041257 through 259.

5   There's a blank page on the back, I think.

6   Looking at the first page, what is it?

7     A.   It's a note to me from KY.

8     Q.   Do you remember receiving this

9   note from KY?

10    A.   Not particularly. Vaguely.

11    Q.   He says on the -- he says it is

12   not -- he is not sure that we are -- this

13   meets the criteria that's set forth in UEP

14   guidelines.

15    A.   Yeah.

16    Q.   What was he asking you about,

17   do you recall?

18    A.   Him and my brother were having

19   a divide over what was catastrophic and what

20   wasn't. My brother always wanted to know if

21   there was over X mortality, he felt that was

22   catastrophic. And the rules were a little

23   bit different than that I think.

24    Q.   He says, "We are backfilling

25   some houses again" in the first sentence.

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1     MARCUS RUST - HIGHLY CONFIDENTIAL

2     A.   Yes.

3     Q.   Was -- who was doing it, was

4   your brother doing it or was KY?

5       MR. BARNES: Object to the form.

6       THE WITNESS: My brother --

7       well --

8   BY MR. SCHIRMER:

9     Q.   Under whose supervision was it

10   being done?

11    A.   Probably both.

12    Q.   And so KY was writing you a

13   letter saying here's what's going on?

14    A.   It was a -- we always -- my --

15   our family, we've always been go 100 percent.

16   With all the production in the industry that

17   went to cost plus egg marketing, we have to

18   compete with those guys in the products

19   field. And to do that, we had to have

20   maximum space that we could -- we walked a

21   fine line staying in the UEP program for our

22   shell egg customers and having to compete

23   with the likes of Michaels, and there's

24   probably a third of the industry that's on

25   cost plus marketing. And when you're on a

<p style="text-align: right;">Page 306</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     cost plus marketing of your egg, they don't</p> <p>3     care, they're under contract. They don't --</p> <p>4     the Urner Barry market going up and down</p> <p>5     doesn't affect them, but it affects us. So</p> <p>6     we have to maximize our production for our</p> <p>7     space every day and they don't have to under</p> <p>8     that type of marketing versus what we do.</p> <p>9     Q.   I'm showing you what's going to</p> <p>10    be marked as Exhibit 45. I'm sorry, but I</p> <p>11    only have two copies of this one.</p> <p>12    - - -</p> <p>13    (Exhibit 45, 9/12/06 E-mail,</p> <p>14    Bates RAUUPDATE0039121, was marked for</p> <p>15    identification.)</p> <p>16    - - -</p> <p>17    BY MR. SCHIRMER:</p> <p>18    Q.   I'm showing you what's been</p> <p>19    marked as Exhibit 45, bears Bates number</p> <p>20    RAUUPDATE0039121. What is this document?</p> <p>21    A.   This is a note that looks -- I</p> <p>22    believe it to be a note from my</p> <p>23    brother-in-law to Ty.</p> <p>24    Q.   Do you recall receiving this</p> <p>25    document?</p>	<p style="text-align: right;">Page 308</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     Q.   Under the UEP program, are you</p> <p>3     familiar with something called the</p> <p>4     100 percent rule?</p> <p>5     A.   Yes.</p> <p>6     Q.   What is it?</p> <p>7     A.   That is where the ultimate goal</p> <p>8     of several of us in the program was to keep</p> <p>9     all to be -- to follow animal welfare rules</p> <p>10    and say you're an animal welfare believer,</p> <p>11    you had to keep all your chickens in the same</p> <p>12    amount of space and treat all chickens the</p> <p>13    same. You couldn't have chickens one way and</p> <p>14    chickens another way and chickens another way</p> <p>15    for two or three, four different kinds of</p> <p>16    customers.</p> <p>17    MR. SCHIRMER: Let's mark this</p> <p>18    as the next number.</p> <p>19    - - -</p> <p>20    (Exhibit 46, E-mail chain, Bates</p> <p>21    NL 0023831, was marked for</p> <p>22    identification.)</p> <p>23    - - -</p> <p>24    MR. SCHIRMER: It has two pages</p> <p>25    on it, but I only gave him one that</p>
<p style="text-align: right;">Page 307</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     A.   Yes. Yeah. I remember looking</p> <p>3     at it.</p> <p>4     Q.   What was -- I admit to not</p> <p>5     really understanding what's going on here.</p> <p>6     What's the nature of the issue that's being</p> <p>7     addressed?</p> <p>8     A.   Okay. What's being addressed</p> <p>9     was, if you had -- kind of like when you look</p> <p>10    at rules or something, they were talking</p> <p>11    about putting flocks -- when you take a given</p> <p>12    house and then you add chickens to that</p> <p>13    house, that's called backfilling. Under the</p> <p>14    rules, when you really look close at it, if</p> <p>15    you take two houses, move both houses and</p> <p>16    re-populate them all mixed up together, you</p> <p>17    created a new flock. That's what they're</p> <p>18    talking about there.</p> <p>19    Q.   So what he's talking about is</p> <p>20    at the time you were re-populating two houses</p> <p>21    by mixing them all together?</p> <p>22    A.   What you could do under the</p> <p>23    rules is you could take two houses with old</p> <p>24    birds and move them to a different location</p> <p>25    and call it a new flock.</p>	<p style="text-align: right;">Page 309</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     has the first page.</p> <p>3     MR. BARNES: Excuse me, Mark.</p> <p>4     You gave him the first page, not the</p> <p>5     second?</p> <p>6     MR. SCHIRMER: Just the first,</p> <p>7     yeah. I would have given him the</p> <p>8     second one, I just didn't make copies.</p> <p>9     I didn't think it was fair.</p> <p>10    MS. ANDERSON: This is 46?</p> <p>11    MR. SCHIRMER: Yes.</p> <p>12    BY MR. SCHIRMER:</p> <p>13    Q.   I'm showing you what has been</p> <p>14    marked as Exhibit 46, bears Bates number</p> <p>15    NL 0023831. What is it?</p> <p>16    A.   It looks to be an e-mail.</p> <p>17    Q.   From whom to whom?</p> <p>18    A.   Looks like from me.</p> <p>19    Q.   You send it to Chad Gregory,</p> <p>20    Ron Truex and others?</p> <p>21    A.   Yes.</p> <p>22    Q.   Who is Ron Truex?</p> <p>23    A.   Ron Truex is with Creighton</p> <p>24    Brothers.</p> <p>25    Q.   How about Jim Hull?</p>

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<p style="text-align: right;">Page 310</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     A.   He was with a breaking division</p> <p>3   of Cal-Maine Foods, American Egg Products.</p> <p>4   Actually it's a separate company, I think, at</p> <p>5   the time.</p> <p>6     Q.   Roger Deffner?</p> <p>7     A.   National Foods.</p> <p>8     Q.   Gordon Saturn -- Satrum,</p> <p>9   S-A-T-R-U-M.</p> <p>10    A.   Satrum Farms in Oregon or</p> <p>11   Washington. One of the two.</p> <p>12    Q.   Who is Doug Wicker?</p> <p>13    A.   With Ise Farms.</p> <p>14           COURT REPORTER: I'm sorry?</p> <p>15           THE WITNESS: Ise, South</p> <p>16   Carolina.</p> <p>17   BY MR. SCHIRMER:</p> <p>18    Q.   And Craig Willardson is from?</p> <p>19    A.   Moark. Wilcox was from Wilcox</p> <p>20   Farms.</p> <p>21    Q.   Do you recall writing this</p> <p>22   e-mail?</p> <p>23    A.   I have to read it first.</p> <p>24    Q.   Why don't you read it?</p> <p>25    A.   [Reviewing document.] Yes.</p>	<p style="text-align: right;">Page 312</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2   cared about was the price of eggs. They</p> <p>3   didn't care if you hung the chicken by its</p> <p>4   neck and had 100 of them hanging there, as</p> <p>5   long as the eggs were cheap, they didn't care</p> <p>6   how the animal was raised. There were</p> <p>7   producers who were -- had one farm under the</p> <p>8   UEP program and selling to Wal-Mart, and</p> <p>9   there was other -- and they had other</p> <p>10   facilities that were selling eggs to the</p> <p>11   inner city markets at the lesser cost. Doing</p> <p>12   both productions, methods of production there</p> <p>13   were some gerrymander ownership rules.</p> <p>14    Q.   Now, when you say "lower cost,"</p> <p>15   what do you mean by "lower cost" there?</p> <p>16    A.   How do you mean?</p> <p>17    Q.   Well, you say, "...producers</p> <p>18   for lower cost not in the program eggs..."</p> <p>19   What does that mean?</p> <p>20    A.   If -- anyone who puts chickens</p> <p>21   at 45 or 50 or 53 inches has lower cost per</p> <p>22   dozen than a producer does at 67 inches per</p> <p>23   bird. That's why the supermarket chains</p> <p>24   agreed to come in and pay more money to</p> <p>25   people initially to start the program so we</p>
<p style="text-align: right;">Page 311</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     Q.   Do you recall what this was</p> <p>3   about?</p> <p>4     A.   Yes.</p> <p>5     Q.   What was it about, sir?</p> <p>6     A.   It was about what we called the</p> <p>7   100 percent rule.</p> <p>8     Q.   And it said in the third line</p> <p>9   down. It's not really the third sentence, I</p> <p>10   don't think. It says, "...if the present</p> <p>11   motion before the board passes it will lead</p> <p>12   to purely folks offering whatever is cheapest</p> <p>13   and will force sellers into big city markets</p> <p>14   to go get side deals with producers for lower</p> <p>15   cost not in program eggs..."</p> <p>16    A.   Yes.</p> <p>17    Q.   What does that mean?</p> <p>18    A.   There was producers who, to get</p> <p>19   advantage of what the big chains wanted, you</p> <p>20   know, which -- you know, under the FMI group,</p> <p>21   they wanted people in the Animal Care</p> <p>22   Program. Your smaller in the New York City</p> <p>23   market, in the Chicago market where you're</p> <p>24   dealing with large ethnic groups, there's a</p> <p>25   lot of those people, the only thing they</p>	<p style="text-align: right;">Page 313</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2   could build more space.</p> <p>3     Q.   So if everyone operates under</p> <p>4   the same rules, they have, at least with</p> <p>5   regard to that aspect of the cost, have</p> <p>6   similar cost structures?</p> <p>7     A.   Well, you had multiple</p> <p>8   producers producing for multiple markets.</p> <p>9   You had McDonald's out there, they're one of</p> <p>10   the largest egg buyers in the United States,</p> <p>11   they were buying eggs on a cost plus</p> <p>12   production basis for, say, 80 inches of bird.</p> <p>13   You had Burger King coming in buying all</p> <p>14   their eggs on a cost formula based on</p> <p>15   85 square inches per bird or whatever it was,</p> <p>16   and pricing those eggs that way. You had</p> <p>17   other restaurant chains that come in and</p> <p>18   wanted theirs a different way yet. So what</p> <p>19   was taking place, then you had what I'd call,</p> <p>20   not a good word, but Chinese buyer who didn't</p> <p>21   care how they got bought or how they got</p> <p>22   produced. The only thing they cared about</p> <p>23   was price. They didn't care about any of the</p> <p>24   animal welfare issues.</p> <p>25    Q.   It's obvious I wasn't clear, so</p>

<p style="text-align: right;">Page 314</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     it's my fault.</p> <p>3             You talk about lower cost</p> <p>4     producers not in the program eggs.</p> <p>5     A.    Right.</p> <p>6     Q.    As I understand your answer to</p> <p>7     a previous question, what you're saying is</p> <p>8     whoever can produce eggs and essentially put</p> <p>9     more chickens into --</p> <p>10    A.    Between the cost to produce</p> <p>11    between an 85-inch bird and a 50-inch bird</p> <p>12    may be some were different producers,</p> <p>13    different cages. Somewhere between maybe 4</p> <p>14    cents a dozen and 10 cents a dozen or 12</p> <p>15    cents a dozen.</p> <p>16    Q.    So there's a difference between</p> <p>17    those two, the 45 --</p> <p>18    A.    There's a difference, your</p> <p>19    capital investment per bird. Your capital</p> <p>20    investment per bird at 67 inches is much</p> <p>21    different than your capital investment -- if</p> <p>22    you take \$10 and divide it by six chickens,</p> <p>23    you're going to have one number. If you</p> <p>24    divide it by four chickens, you're going to</p> <p>25    have another number.</p>	<p style="text-align: right;">Page 316</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2             MR. BARNES: Yeah, but if you</p> <p>3     run us up to the deadline, Mr.</p> <p>4     Schirmer, I'm going to have to cut you</p> <p>5     off, because you've taken a lot of</p> <p>6     time with breaks and exhibits that you</p> <p>7     don't have copies of. You can take as</p> <p>8     many breaks as you want, but your</p> <p>9     examination is going to be over at</p> <p>10    3:30.</p> <p>11            MR. SCHIRMER: My examination is</p> <p>12    going -- okay. Don, this has been one</p> <p>13    where breaks have been kept to the</p> <p>14    minimum, and, frankly, I've taken very</p> <p>15    little time to get copies. I</p> <p>16    understand you want the man out, but</p> <p>17    that wasn't necessary. Come on.</p> <p>18            MR. BARNES: The record will</p> <p>19    show the number of breaks and the</p> <p>20    time.</p> <p>21            - - -</p> <p>22            (Exhibit 47, 5/3/06 E-mail,</p> <p>23    Bates NL00240280, was marked for</p> <p>24    identification.)</p> <p>25            - - -</p>
<p style="text-align: right;">Page 315</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     Q.    And so when everybody is on a</p> <p>3     level playing field so to speak --</p> <p>4     A.    If everyone is on a laying --</p> <p>5     level playing field, which is what the</p> <p>6     supermarket industry wanted, they wanted a</p> <p>7     competitive bidding process from all of us</p> <p>8     producers. They didn't want everyone on</p> <p>9     different things because they wanted to have</p> <p>10    one set of specs that everyone was producing</p> <p>11    for.</p> <p>12    Q.    Let's start -- let's go to that</p> <p>13    idea, the level playing field. So -- but</p> <p>14    you're telling me supermarkets were looking</p> <p>15    for, at least those that weren't in the areas</p> <p>16    that were looking for the lowest cost, was</p> <p>17    everybody who had the -- basically with</p> <p>18    regard to the, what you call the capital</p> <p>19    investment per bird were on essentially the</p> <p>20    same basis?</p> <p>21    A.    Correct.</p> <p>22    Q.    Fair enough.</p> <p>23            MR. SCHIRMER: Could we take</p> <p>24    literally a minute and half so we can</p> <p>25    get a copy of this?</p>	<p style="text-align: right;">Page 317</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2             MR. SCHIRMER: By the way, I'm</p> <p>3     not going to be going anywhere near</p> <p>4     3:30, Don -- Mr. Barnes. Not even</p> <p>5     close.</p> <p>6             MR. BARNES: You can call me</p> <p>7     Don.</p> <p>8             MR. SCHIRMER: Okay. Sorry.</p> <p>9     That's just --</p> <p>10    BY MR. SCHIRMER:</p> <p>11    Q.    Looking at -- showing you what</p> <p>12    has been marked as Exhibit Number 47, Bates</p> <p>13    number NL00240280. What is it, Mr. Rust?</p> <p>14    A.    It is an e-mail that I sent to</p> <p>15    a group of producers who are also egg</p> <p>16    breakers.</p> <p>17    Q.    Who is jarias@vffi.com?</p> <p>18    A.    That's Joe Arias. He's with a</p> <p>19    producer in California. I forget the name of</p> <p>20    his farm.</p> <p>21    Q.    Who is ron@cl -- @cb-cl.com?</p> <p>22    A.    That's Ron Truex at Creighton</p> <p>23    Brothers.</p> <p>24    Q.    Who is Glenn Hickman?</p> <p>25    A.    Glenn Hickman is at Hickman's</p>

80 (Pages 314 - 317)



<p style="text-align: right;">Page 318</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     Family Farms in Arizona.</p> <p>3     Q.    So -- maybe you've already</p> <p>4     answered this. So all these people here are</p> <p>5     companies that --</p> <p>6     A.    Break eggs.</p> <p>7     Q.    -- break eggs, okay.</p> <p>8     A.    They're producers who break</p> <p>9     eggs.</p> <p>10    Q.    Do you remember writing this</p> <p>11   e-mail?</p> <p>12    A.    Yes.</p> <p>13    Q.    The second paragraph that</p> <p>14   starts with "I hope...", says that I -- you</p> <p>15   say that "I hope the formation of a good ACC</p> <p>16   egg product marketing co-op can help achieve</p> <p>17   the shortfalls of the ACC programs egg</p> <p>18   product marketing opportunities." You say</p> <p>19   you don't know whether that's going to be the</p> <p>20   case.</p> <p>21           Was there ever an ACC product</p> <p>22   marketing co-op formed?</p> <p>23    A.    We attempted and then some of</p> <p>24   these lawsuits started and we determined it</p> <p>25   was going to be much more efficient to never</p>	<p style="text-align: right;">Page 320</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     into the winter months and the holiday season</p> <p>3     when the egg demand was there. When the cost</p> <p>4     plus guys come into the picture and only mass</p> <p>5     produce cost plus, they took away the shell</p> <p>6     egg producers' disposal area for their</p> <p>7     surplus because they mass produce high</p> <p>8     volumes of eggs at a cost far cheaper than</p> <p>9     our production cost is.</p> <p>10    Q.    How would a co-op, a marketing</p> <p>11   co-op of the type that you were considering</p> <p>12   forming or had begun to form I understand,</p> <p>13   how would that have addressed that problem?</p> <p>14    A.    What my idea was, was to take</p> <p>15   the 10 or 12 breakers. Everybody, when you</p> <p>16   do egg products, a company like Michael</p> <p>17   Foods, for instance, they're going to -- you</p> <p>18   couldn't list all their products on this</p> <p>19   sheet of paper. Each one of those products</p> <p>20   that they sell, the machinery line and</p> <p>21   packaging line for each product in there is</p> <p>22   probably a 1 to \$5 million investment. For</p> <p>23   us to compete with them, we -- as an</p> <p>24   individual producer, we can't afford the</p> <p>25   capital just for the equipment to make all</p>
<p style="text-align: right;">Page 319</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     start it than start it because we couldn't</p> <p>3     make enough money to pay the lawyers to</p> <p>4     defend anything we was going to do.</p> <p>5     Q.    What was the purpose for which</p> <p>6     you were thinking or discussing forming an</p> <p>7     ACC egg product marketing co-op?</p> <p>8     A.    We wanted to form -- the</p> <p>9     products industry, the ingredient buyer were</p> <p>10   not in -- people who were industrial users,</p> <p>11   they don't care what the Urner Barry market</p> <p>12   is, they don't care what -- the only thing</p> <p>13   they care about is that least cost bid. When</p> <p>14   we were having to produce for the supermarket</p> <p>15   industry who wanted to maintain something</p> <p>16   they could keep the animal rightists off</p> <p>17   their back, it caused us to have our surplus</p> <p>18   eggs, the egg -- no matter how good you are,</p> <p>19   10 percent to 15 percent of your eggs on a</p> <p>20   year round basis of all egg production is</p> <p>21   going to get broke. In the years prior, the</p> <p>22   Urner Barry market would always -- the market</p> <p>23   would make it to where someone could</p> <p>24   profitably buy the surplus, dry it and/or</p> <p>25   freeze it, put it in storage to offset going</p>	<p style="text-align: right;">Page 321</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     the different lines they make. My idea was</p> <p>3     to go to like the cheese industry, the</p> <p>4     cheese -- when you go to a cheese company,</p> <p>5     they don't sit there and try to make 50 kinds</p> <p>6     of cheese. That plant will make one or two</p> <p>7     kinds of cheeses. My theory was to take all</p> <p>8     of our egg breaking groups and have one</p> <p>9     company say, okay, you're going to make</p> <p>10   2-pound liquid, another company make 30-pound</p> <p>11   liquid. Make them efficient at producing one</p> <p>12   given product, bring them into some kind of a</p> <p>13   central distribution and then distribute the</p> <p>14   product out to the food service.</p> <p>15   Q.    Would it all have been sold</p> <p>16   under a single label, is that your vision?</p> <p>17    A.    That is what my vision would</p> <p>18   have been.</p> <p>19           - - -</p> <p>20           (Exhibit 48, E-mail chain, Bates</p> <p>21   RAUPDATE0045472 - RAUPDATE0045475, was</p> <p>22   marked for identification.)</p> <p>23           - - -</p> <p>24   BY MR. SCHIRMER:</p> <p>25   Q.    I'm showing you what was marked</p>



<p style="text-align: right;">Page 322</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2 as Exhibit 49.</p> <p>3     COURT REPORTER: 48.</p> <p>4 BY MR. SCHIRMER:</p> <p>5     Q. 48. I screwed up. Bearing</p> <p>6 Bates number RAUPDATE0045472 through 0045475.</p> <p>7     What is it? Take a minute to</p> <p>8 look through it. Go ahead. I wasn't trying</p> <p>9 to rush you. What is this document?</p> <p>10    A. It's copies of some e-mail</p> <p>11 stuff. The guy at UEP had asked for</p> <p>12 information looks like.</p> <p>13    Q. What kind of information had he</p> <p>14 asked for?</p> <p>15    A. He wanted to know what was</p> <p>16 taking place as far as construction, molting,</p> <p>17 whatnot in the industry.</p> <p>18    Q. And on page 45472, you wrote</p> <p>19 him an e-mail on what's called your info, is</p> <p>20 that right, or our info?</p> <p>21    A. Yeah. Yeah.</p> <p>22    Q. Then you -- after you give</p> <p>23 him -- you say that you're not molting in</p> <p>24 North Carolina or Georgia and you're</p> <p>25 remodeling six houses in the next 12 months</p>	<p style="text-align: right;">Page 324</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     Q. Where would you have heard this</p> <p>3 stuff?</p> <p>4     A. Just from various salesmen</p> <p>5 coming in trying to sell this stuff.</p> <p>6     MR. BARNES: You left out a</p> <p>7 sentence, Mr. Schirmer, right in the</p> <p>8 middle of all that which would not be</p> <p>9 rumor, which would be information that</p> <p>10 he is aware of.</p> <p>11     MR. SCHIRMER: We expect to add</p> <p>12 the balance of a million this year and</p> <p>13 a million next to finish the farm.</p> <p>14     THE WITNESS: We were expanding.</p> <p>15 BY MR. SCHIRMER:</p> <p>16    Q. It was shown on the document</p> <p>17 that I showed you earlier?</p> <p>18    A. Yes. With the date on it.</p> <p>19    Q. There's -- right under that</p> <p>20 e-mail from you there's an e-mail from Gene</p> <p>21 Gregory to a number of people, I think</p> <p>22 including you. It says, "We are more than</p> <p>23 happy to do another molt survey. It was</p> <p>24 somewhat surprising to me in the last one to</p> <p>25 see so many companies reporting no changes."</p>
<p style="text-align: right;">Page 323</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2 with a net add of 150,000 in Missouri. Is</p> <p>3 that right?</p> <p>4     A. Uh-huh.</p> <p>5     MR. MONICA: Mr. Rust, you have</p> <p>6 to answer verbally.</p> <p>7     THE WITNESS: Yes. Sorry.</p> <p>8     MR. SCHIRMER: Thank you.</p> <p>9     THE WITNESS: I would have</p> <p>10 forgot.</p> <p>11    MR. MONICA: It was a good</p> <p>12 answer so I wanted to make sure.</p> <p>13 BY MR. SCHIRMER:</p> <p>14    Q. You then said, in the last</p> <p>15 couple of lines it starts, The only new other</p> <p>16 I am hearing is a million by Weaver, 1.5 by</p> <p>17 Cal-Maine, 1.5 by Rembrandt, the Dean thing</p> <p>18 in Ohio, Jack DeCoster's 3. -- 3 to 4 million</p> <p>19 back from the closed down complexes in Ohio,</p> <p>20 500,000 by Midwest Poultry, and 500,000 by</p> <p>21 Schipper in Michigan - again this is salesman</p> <p>22 talk.</p> <p>23    A. That would be rumor -- I was</p> <p>24 part of the rumor mill. He asked me and I</p> <p>25 repeated what I heard.</p>	<p style="text-align: right;">Page 325</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     To your understanding, did</p> <p>3 companies, did UEP gather this type of</p> <p>4 information from producers on a regular</p> <p>5 basis?</p> <p>6     A. There's occasion we would have</p> <p>7 gone and asked for it, I guess. There's --</p> <p>8 you know, if they hadn't been around, they</p> <p>9 had what they called regional meetings. I</p> <p>10 never attended the regional meetings as much.</p> <p>11 But when they would have a regional meeting,</p> <p>12 they would get -- they may ask people what</p> <p>13 was going on there.</p> <p>14    Q. And at those meetings, did</p> <p>15 people say what was going on in terms of</p> <p>16 their building?</p> <p>17    A. UEP has always been a voluntary</p> <p>18 thing. You could give information if you</p> <p>19 wanted. You didn't have to if you didn't</p> <p>20 want to.</p> <p>21    Q. Was it your experience that</p> <p>22 people frequently gave information?</p> <p>23    A. Frequently would.</p> <p>24    Q. And that was -- and did -- go</p> <p>25 ahead.</p>

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1     MARCUS RUST - HIGHLY CONFIDENTIAL

2     A.   Just like us, we don't report

3 anything to the egg industry, but the egg

4 industry reports what they think we got. The

5 industry rumor mill sometimes knows better

6 than what we know.

7     Q.   But in this case, UEP would

8 actually on occasion went out and asked and

9 report what they find --

10    A.   Yeah, or confirm something.

11       MR. SCHIRMER: Now 49.

12       - - -

13       (Exhibit 49, E-mail chain, Bates

14 RAUUPDATE0080109, was marked for

15 identification.)

16       - - -

17 BY MR. SCHIRMER:

18    Q.   Why don't you have a look at

19 this one, it's RAUUPDATE0080109.

20    A.   Okay.

21    Q.   Have a look -- I'll give you a

22 minute to look at it.

23    A.   [Reviewing document.]

24    Q.   This appears to be two e-mails.

25    A.   Yes.

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1     MARCUS RUST - HIGHLY CONFIDENTIAL

2     Q.   The e-mail on the bottom says

3 in the "From" line says Marcus Rust, "From:

4 marcus rust..."

5     A.   Yes.

6     Q.   welby\_two@yahoo.com, is that

7 one of your e-mails?

8     A.   That was -- in high school I

9 was called Welby, that was when Dr. Welby was

10 a show because my name is Marcus.

11    Q.   Marcus Welby, M.D.

12    A.   When I went to welby@yahoo.com,

13 I wasn't going to put my name on it at first.

14 I had to figure out a way to do it. T-W-O,

15 and I put the hyphen thing under -- the

16 underscore in so it didn't get picked up by

17 the spam at first. It worked.

18    Q.   Who is Larry Seger?

19    A.   Larry Seger was the hard -- or

20 the head guy at U.S. Egg Marketers.

21    Q.   What was -- what is U.S. Egg

22 Marketers?

23    A.   That was USEM, USEM or US --

24 whatever it is.

25       MR. BARNES: EM.

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1     MARCUS RUST - HIGHLY CONFIDENTIAL

2       THE WITNESS: USEM.

3 BY MR. SCHIRMER:

4    Q.   When you say "head guy," was he

5 a staff member, was he chairman of the board?

6    A.   He was the -- I forget what his

7 title was, but he was the head guy.

8    Q.   Was he also an egg producer?

9    A.   Yes.

10   Q.   What's his -- what company is

11 he with?

12   A.   Wabash Valley Produce.

13   Q.   Look at it for -- in the first

14 sentence of your e-mail dated August 9, 2007,

15 to Mr. Seger, after number 1, you say,

16 "Randon has always said when any pricing

17 issues are to be discussed we should use a

18 'monitored' conference call..." What are you

19 talking about when you're talking about

20 pricing issues?

21   A.   Well, there was somebody

22 that -- we was having a conference call what

23 the price may or may not have been on an

24 export order and someone -- the rumor mill in

25 the industry knew quicker before we even went

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1     MARCUS RUST - HIGHLY CONFIDENTIAL

2 to the members, of the cause or evidently

3 someone eavesdropped or something. I'm not

4 sure what took place. Or someone talked. I

5 don't know what happened.

6    Q.   Then in -- right after that,

7 you say there's -- on the one, two, three,

8 fourth line down after the word "sale" which

9 is in quotations. There's a double hyphen.

10 It says, "I do not think this is necessary

11 for t-w-t member position calls feel anytime

12 we are talking of issues that would stabilize

13 and possibly influence the market they should

14 be held on a little more stricter conf call

15 level..." What does "t-w-t member" mean?

16   A.   I'm trying to -- I'm not sure.

17 I don't know if I mistyped something. I'm

18 prone to do that.

19   Q.   Join the group.

20   A.   I don't recall what it would

21 mean. I never heard of the t-w-t.

22   Q.   What do you mean when feel --

23 any time you're talking about issues that

24 would stabilize and possibly influence the

25 market, what were you talking about?

<p style="text-align: right;">Page 330</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     A.   Listen, whenever you start to</p> <p>3 build into surplus period, that's when all</p> <p>4 the breaker guys are lowering their bids on</p> <p>5 Egg Clearinghouse which is -- Egg</p> <p>6 Clearinghouse is a market thing that 30 to 50</p> <p>7 or 80 loads a day may trade on. It's an</p> <p>8 electronic clearinghouse. And the breakers</p> <p>9 are the always in there bidding for those</p> <p>10 eggs. It's a thing that Urner Barry kind of</p> <p>11 looks at and then they -- they'll use</p> <p>12 information off of those trades and how they</p> <p>13 set the so-called Urner Barry market which</p> <p>14 affects, probably on the Urner Barry market</p> <p>15 in the U.S., there are probably 35,</p> <p>16 40 percent of the supermarkets volume of eggs</p> <p>17 produced to give price off of Urner Barry.</p> <p>18 There would be various ones that have had</p> <p>19 cost plus arrangements through the years, but</p> <p>20 the Urner Barry gets -- they get their</p> <p>21 information if the market is going up or down</p> <p>22 off of this Egg Clearinghouse.</p> <p>23     Q.   And so when you say you're</p> <p>24 talking about issues that stabilize and</p> <p>25 possibly influence the market, maybe I don't</p>	<p style="text-align: right;">Page 332</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2 those. And if the word of the export gets</p> <p>3 out quicker, then those guys would raise</p> <p>4 their bid up or lower their bid if they knew</p> <p>5 the export didn't go through to buy the</p> <p>6 surplus eggs.</p> <p>7     Q.   So the word of what was</p> <p>8 happening in the USEM exports --</p> <p>9     A.   Call. If the information from</p> <p>10 that call whether an export was going through</p> <p>11 or not could affect the pricing that one of</p> <p>12 the breaker dryers is willing to bid or pay</p> <p>13 for the eggs.</p> <p>14     MR. SCHIRMER: I think that's it</p> <p>15 for me. Give me 30 seconds or a</p> <p>16 minute to talk to my colleagues, I</p> <p>17 think I'm done.</p> <p>18     MR. BARNES: Sure.</p> <p>19     VIDEOGRAPHER: Off the record at</p> <p>20 2:37.</p> <p>21     - - -</p> <p>22     (A recess was taken.)</p> <p>23     - - -</p> <p>24     VIDEOGRAPHER: Back on the</p> <p>25 record at 2:50 -- I'm sorry, 2:50.</p>
<p style="text-align: right;">Page 331</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2 understand how that fits in.</p> <p>3     A.   Well, there would be many bids</p> <p>4 on ECI. The breakers that are bidding -- you</p> <p>5 have breakers on ECI, Egg Clearinghouse is</p> <p>6 exactly what it says. It's where all of us</p> <p>7 people that are all different sizes put our</p> <p>8 extras on. All the people that are short are</p> <p>9 putting bids on it. So we can match --</p> <p>10 everybody has different flock ages of</p> <p>11 chickens. And the customers -- our customers</p> <p>12 are wanting the same thing all the time so</p> <p>13 there's a constant flow of eggs going around</p> <p>14 the industry. Trucks meet each other,</p> <p>15 different sizes going up and down the</p> <p>16 highway, you know, from when they need to get</p> <p>17 those eggs. When you have the Cargill or</p> <p>18 people breaking like a Michaels. You know,</p> <p>19 Michaels at time would place bids out there</p> <p>20 for 20 loads or 10 loads of breaking stock.</p> <p>21 The bids may be at 40 cents. And Sonstegard</p> <p>22 may have 20 loads or 10 loads, bid at 30</p> <p>23 cents. And they'll bid those repeatedly for</p> <p>24 time period out deliveries. Us as producers,</p> <p>25 we have the option to sell those, to look at</p>	<p style="text-align: right;">Page 333</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     - - -</p> <p>3     EXAMINATION</p> <p>4     - - -</p> <p>5 BY MR. MALYSIAK:</p> <p>6     Q.   Mr. Rust, my name is Jim</p> <p>7 Malysiak. I'm with the Chicago law firm of</p> <p>8 Jenner &amp; Block. I represent Kraft Foods,</p> <p>9 Kellogg's, General Mills and Nestle in this</p> <p>10 case. I'm also here today for the -- them as</p> <p>11 well as the other direct action plaintiffs.</p> <p>12     When Rose Acre joined UEP in</p> <p>13 2002, did you have an understanding whether</p> <p>14 or not UEP was a Capper-Volstead cooperative?</p> <p>15     A.   Yes.</p> <p>16     Q.   What was your understanding?</p> <p>17     A.   It was a Capper-Volstead</p> <p>18 cooperative.</p> <p>19     Q.   What did that mean to you?</p> <p>20     A.   That meant it was a group of</p> <p>21 farmers that could get together and talk</p> <p>22 about egg production.</p> <p>23     Q.   Had Rose Acre ever been a</p> <p>24 member of a Capper-Volstead cooperative</p> <p>25 before then?</p>

<p style="text-align: right;">Page 334</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     A.   No.</p> <p>3     Q.   Where did you gain your</p> <p>4 understanding that UEP was a Capper-Volstead</p> <p>5 cooperative?</p> <p>6     A.   From the people at United Egg</p> <p>7 Producers.</p> <p>8     Q.   Who in particular?</p> <p>9     A.   Mr. Gregory, I think.</p> <p>10    Q.   This was around the time Rose</p> <p>11 Acre joined?</p> <p>12    A.   Yes.</p> <p>13    Q.   What did he say to you about</p> <p>14 that?</p> <p>15    A.   Well, they had been around for</p> <p>16 years, but he just said that -- he explained</p> <p>17 what you could do as a cooperative group or</p> <p>18 not do, whatever.</p> <p>19    Q.   Was this an in-person</p> <p>20 conversation?</p> <p>21    A.   Yes.</p> <p>22    Q.   Do you remember where it was?</p> <p>23    A.   My office.</p> <p>24    Q.   He was visiting you?</p> <p>25    A.   He had visited me.</p>	<p style="text-align: right;">Page 336</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     Q.   How about for UEP as a whole?</p> <p>3     A.   Yes. Yes, if you were a</p> <p>4 farmer.</p> <p>5     Q.   I mean, did you look into</p> <p>6 whether the other members of UEP qualified as</p> <p>7 farmers?</p> <p>8     A.   No. I would assume that they</p> <p>9 would have had to pass the same test, their</p> <p>10 paperwork that we did.</p> <p>11    Q.   So you're relying on what Mr.</p> <p>12 Gregory told you on that respect?</p> <p>13    A.   Yes. Yes.</p> <p>14    Q.   Did you ask UEP for any proof</p> <p>15 that the other members were farmers?</p> <p>16    A.   I had no reason to.</p> <p>17    Q.   When you -- when Rose Acre</p> <p>18 joined UEP in 2002, did you or the company</p> <p>19 have any concern that if it was not a</p> <p>20 valid -- that if UEP was not a valid</p> <p>21 Capper-Volstead cooperative, there might be</p> <p>22 some liability under the antitrust laws for</p> <p>23 Rose Acre?</p> <p>24    A.   They had been -- we knew that</p> <p>25 from prior experience when we got sued from</p>
<p style="text-align: right;">Page 335</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     Q.   Do you recall any specifics of</p> <p>3 what he said about what a Capper-Volstead</p> <p>4 cooperative could or could not do?</p> <p>5     A.   Not actual specifics other than</p> <p>6 it was a cooperative of farmers. And I knew,</p> <p>7 my grandparents had been in the Jackson</p> <p>8 County Farm Bureau co-op for multiple years,</p> <p>9 were co-op members.</p> <p>10    Q.   What was your understanding, if</p> <p>11 you had one at that time, what the criteria</p> <p>12 were for being a Capper-Volstead cooperative?</p> <p>13    A.   Be a farmer.</p> <p>14    Q.   So all the members had to be</p> <p>15 farmers?</p> <p>16    A.   Yes.</p> <p>17    Q.   Producers essentially?</p> <p>18    A.   Producers, yes.</p> <p>19    Q.   Before you -- Rose Acre joined</p> <p>20 UEP, did Rose Acre do anything to investigate</p> <p>21 whether what Mr. Gregory was saying was true</p> <p>22 about being a valid Capper-Volstead</p> <p>23 cooperative?</p> <p>24    A.   Yes, we have IRS qualification</p> <p>25 as a farmer.</p>	<p style="text-align: right;">Page 337</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2 various groups of people that we thought had</p> <p>3 met at different co-op meetings, per se, we</p> <p>4 thought at that point in time that, you know,</p> <p>5 they had some kind of protection or whatever</p> <p>6 from them being a co-op.</p> <p>7     Q.   At the time you -- that Rose</p> <p>8 Acre joined UEP, and I don't want to know</p> <p>9 what any attorneys may have actually told</p> <p>10 you, but did you consult with any attorneys</p> <p>11 about whether UEP was a valid Capper-Volstead</p> <p>12 cooperative?</p> <p>13    A.   I don't recollect we did. I</p> <p>14 think we relied on what we were told by UEP.</p> <p>15    Q.   And UEP didn't give you any</p> <p>16 lawyer opinions, that type of thing on that</p> <p>17 issue?</p> <p>18    A.   They could have at the time or</p> <p>19 showed us papers, I don't recall.</p> <p>20    Q.   You don't recall them doing so?</p> <p>21    A.   They had packets of paper and,</p> <p>22 you know, I'm not a paper collector.</p> <p>23    Q.   Again, I'm not asking you for</p> <p>24 what attorneys might have told you, but at</p> <p>25 this time did you consult with your own</p>

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<p style="text-align: right;">Page 338</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     attorneys about whether UEP was a valid</p> <p>3     Capper-Volstead cooperative?</p> <p>4     A.    I'm sure we did or I would have</p> <p>5     thought we would have. I, you know, probably</p> <p>6     would have asked the question.</p> <p>7     Q.    Do you recall one way or the</p> <p>8     other?</p> <p>9     A.    No.</p> <p>10    Q.    It would have been -- is what</p> <p>11    you're saying it would have been in your</p> <p>12    normal practice at Rose Acre to consult with</p> <p>13    your attorneys on that subject?</p> <p>14    A.    We don't join or sign any paper</p> <p>15    to do anything unless our legal people are</p> <p>16    aware of it.</p> <p>17    Q.    As you sit here today, do</p> <p>18    you -- without telling me, again, what was</p> <p>19    said, do you recall anything that was said by</p> <p>20    your attorneys on this subject?</p> <p>21    A.    I don't recall.</p> <p>22    Q.    Did you know much about other</p> <p>23    UEP members at the time you joined UEP?</p> <p>24    A.    Just knew that we had a lot of</p> <p>25    competitors who were members of UEP.</p>	<p style="text-align: right;">Page 340</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     A.    Yes.</p> <p>3     Q.    Did you -- what was that</p> <p>4     understanding based on?</p> <p>5     A.    Just what was told up front,</p> <p>6     and that's what we had understood it to be</p> <p>7     all along.</p> <p>8     Q.    Did you have conversations with</p> <p>9     someone at USEM about this subject?</p> <p>10    A.    Yes, Larry Seger.</p> <p>11    Q.    Do you recall those</p> <p>12    conversations?</p> <p>13    A.    Yeah, somewhat.</p> <p>14    Q.    Do you recall where they</p> <p>15    occurred?</p> <p>16    A.    Over the phone.</p> <p>17    Q.    Do you recall about when they</p> <p>18    occurred?</p> <p>19    A.    Prior to us joining.</p> <p>20    Q.    So it would be around the time</p> <p>21    you joined?</p> <p>22    A.    Yes.</p> <p>23    Q.    What do you recall those</p> <p>24    conversations?</p> <p>25    A.    I just -- Larry was always a</p>
<p style="text-align: right;">Page 339</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     Q.    Did you have any concern that</p> <p>3     any UEP member that you knew about, you knew</p> <p>4     something about might not qualify as a</p> <p>5     farmer?</p> <p>6     A.    No.</p> <p>7     Q.    Now, I believe you said you</p> <p>8     joined USEM just a few months after you</p> <p>9     joined UEP?</p> <p>10    A.    Two years.</p> <p>11    Q.    Two years?</p> <p>12    A.    Two or three years after.</p> <p>13    Q.    All right. So it was the</p> <p>14    certified --</p> <p>15    A.    Four years.</p> <p>16    Q.    The certified program --</p> <p>17    A.    Four years after.</p> <p>18    Q.    The certified program was a few</p> <p>19    months later, but USEM wasn't for several</p> <p>20    years?</p> <p>21    A.    That was like four years later,</p> <p>22    I think.</p> <p>23    Q.    At the time you joined USEM,</p> <p>24    did you have an understanding that it was a</p> <p>25    Capper-Volstead cooperative?</p>	<p style="text-align: right;">Page 341</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     good friend. He was a competitor, and he was</p> <p>3     trying to get us to join in at USEM, and</p> <p>4     we -- he talked about what they did and we</p> <p>5     knew that they had exported eggs. We never</p> <p>6     knew what prices or anything before. And</p> <p>7     because of what we were doing in North</p> <p>8     Carolina, it seemed like a good natural fit</p> <p>9     as a market for a lot of our surplus eggs, so</p> <p>10    we joined.</p> <p>11    Q.    And, again, without telling me</p> <p>12    anything that attorneys might have told you,</p> <p>13    did you talk to any attorneys about whether</p> <p>14    USEM was a valid Capper-Volstead cooperative</p> <p>15    at about the time you joined?</p> <p>16    A.    It would have only been</p> <p>17    in-house counsel.</p> <p>18    Q.    In house for Rose Acre?</p> <p>19    A.    Yes.</p> <p>20    Q.    Do you recall whether you</p> <p>21    consulted with in-house counsel about that</p> <p>22    subject at that time?</p> <p>23    A.    Probably would have. I don't</p> <p>24    recall. I think I did.</p> <p>25    Q.    I believe you testified earlier</p>



<p style="text-align: right;">Page 342</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     today that the -- at least the main reason</p> <p>3     why Rose Acre joined UEP in 2002 was because</p> <p>4     your customers were requesting wanting to buy</p> <p>5     certified eggs?</p> <p>6     A.    Yes.</p> <p>7     Q.    Through the UEP program?</p> <p>8     A.    Correct.</p> <p>9     Q.    Were there any other reasons</p> <p>10    you joined UEP?</p> <p>11    A.    After seeing what took place in</p> <p>12    Europe and what was going on here and, you</p> <p>13    know, being attacked by the animal rights</p> <p>14    group, you know, we knew we had to -- you</p> <p>15    know, what they say, you know, united you</p> <p>16    stand and divided you fall. We didn't want</p> <p>17    to be picked off as the Lone Ranger by the</p> <p>18    animal rights groups. What we seen was is us</p> <p>19    not being with a bigger group and we was a</p> <p>20    big player, we was being picked on. That's,</p> <p>21    you know, why they burnt some of our -- you</p> <p>22    know, burnt one of our trucks and, you know,</p> <p>23    done what they did. We was a target, you</p> <p>24    know.</p> <p>25    Q.    What could UEP do for you in</p>	<p style="text-align: right;">Page 344</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     Q.    What dimension, hundreds of</p> <p>3     thousands?</p> <p>4     A.    No. I think those costs are</p> <p>5     \$70 to \$100,000 a year maybe. Something like</p> <p>6     that.</p> <p>7     Q.    It stayed around that same</p> <p>8     level throughout the period to 2008?</p> <p>9     A.    I don't think they're -- they</p> <p>10    haven't changed that base rate. When you</p> <p>11    join the Animal Welfare Program, then you</p> <p>12    have to pay higher dues for that.</p> <p>13    Q.    How much was that for you?</p> <p>14    A.    I don't -- I want to say so</p> <p>15    much a case or so much a hen. They had a fee</p> <p>16    that's considered -- they had a PR campaign</p> <p>17    and that made it cost more.</p> <p>18    Q.    Do you recall how much you paid</p> <p>19    each year for that part of it, the certified</p> <p>20    dues?</p> <p>21    A.    I don't recall exact numbers,</p> <p>22    but it could be a half million,</p> <p>23    three-quarters of a million dollars. I could</p> <p>24    be wrong, but I think it was a considerable</p> <p>25    amount of money for that.</p>
<p style="text-align: right;">Page 343</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     that respect?</p> <p>3     A.    Hopefully get to a more unified</p> <p>4     animal rights. We knew we had to get on some</p> <p>5     type of program or we was going to be out of</p> <p>6     the caged egg business by what we saw taking</p> <p>7     place in Europe.</p> <p>8     Q.    Did UEP -- after you joined,</p> <p>9     did UEP provide any lobbying services to the</p> <p>10    group, to members?</p> <p>11    A.    They have always done lobbying</p> <p>12    in D.C. for the various USDA type stuff.</p> <p>13    Q.    Anything with respect to animal</p> <p>14    welfare?</p> <p>15    A.    I'm not sure before we joined.</p> <p>16    I would assume they would have.</p> <p>17    Q.    I assume that Rose Acre had to</p> <p>18    pay dues for UEP membership?</p> <p>19    A.    You pay an annual fee that's</p> <p>20    based on so much a bird, per dozen you</p> <p>21    produce. I forget which.</p> <p>22    Q.    Do you recall at the time you</p> <p>23    joined how much your dues were for each year?</p> <p>24    A.    I don't recall. It was quite</p> <p>25    expensive, though.</p>	<p style="text-align: right;">Page 345</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     Q.    What was your understanding of</p> <p>3     what that money was used for by UEP?</p> <p>4     A.    Well, they hired a PR firm by</p> <p>5     the name of GolinHarris in New York, and did</p> <p>6     PR efforts on the Animal Care Program.</p> <p>7     Q.    Did Rose Acre participate in</p> <p>8     that program in some way, the PR program?</p> <p>9     A.    Yes.</p> <p>10    Q.    What did you do?</p> <p>11    A.    We contributed money to that.</p> <p>12    Q.    Did you do anything else, you</p> <p>13    know, give speeches, do any of that stuff?</p> <p>14    A.    No.</p> <p>15    Q.    No?</p> <p>16    A.    Did we --</p> <p>17    Q.    Did you participate yourself in</p> <p>18    the PR program?</p> <p>19    A.    Could have. I don't recall</p> <p>20    exactly. But I think they had people that</p> <p>21    they hired. We didn't go send people to go</p> <p>22    do that. They had people hired. And they</p> <p>23    were fighting, they handled the fighting the</p> <p>24    ballot initiative that we lost in California</p> <p>25    trying to keep the cages from -- what HSUS</p>

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<p style="text-align: right;">Page 346</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     calls the cage ban from happening, that we</p> <p>3     lost.</p> <p>4     Q.   What other costs did you have</p> <p>5     as a result of the certified program?</p> <p>6     A.   The only other cost we had was</p> <p>7     doing, you know, tracking it, you know,</p> <p>8     doing -- making sure you keep the paperwork</p> <p>9     up to do it and then the actual -- when</p> <p>10    you -- the step-in program that they wanted</p> <p>11    to give the birds more space, that made your</p> <p>12    cost per dozen go up higher, your base.</p> <p>13    Q.   Did UEP during the period from</p> <p>14    when you joined in 2002 through the end of</p> <p>15    2008, did UEP provide any marketing services</p> <p>16    for you?</p> <p>17    A.   No, I can't say they did.</p> <p>18    Q.   Did UEP ever get involved in</p> <p>19    negotiating a price for you?</p> <p>20    A.   No.</p> <p>21    Q.   You always did that yourself?</p> <p>22    A.   I didn't. Our sales guy did,</p> <p>23    right.</p> <p>24    Q.   Did you ever sell collectively</p> <p>25    with other members, in other words, make a</p>	<p style="text-align: right;">Page 348</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     the exports were going to be -- most of the</p> <p>3     exports were shipped from Norfolk.</p> <p>4     Q.   Right. Do you recall what</p> <p>5     percentage -- in those two occasions, what</p> <p>6     percentage of the total exports by USEM were</p> <p>7     Rose Acre eggs?</p> <p>8     A.   I don't recall what percentage.</p> <p>9     I saw a document here earlier that said the</p> <p>10    percentage of one of them was 9 or 10 or</p> <p>11    15,000 cases, something like that.</p> <p>12    Q.   During the period from when you</p> <p>13    joined UEP in 2002 through the end of 2008,</p> <p>14    did you buy and resell eggs? In other words,</p> <p>15    buy eggs from other producers and simply</p> <p>16    resell them in the market?</p> <p>17    A.   Any given week we can have bids</p> <p>18    for one size or kind of egg and not for --</p> <p>19    and be selling something else. Chickens,</p> <p>20    only about 75 percent of the eggs they lay</p> <p>21    are what the actual grocery store wants, at a</p> <p>22    given size. So you have to figure out other</p> <p>23    markets for those.</p> <p>24    Q.   How about did Rose Acre go --</p> <p>25    during that time period, did Rose Acre go out</p>
<p style="text-align: right;">Page 347</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     sale where you all contributed product to the</p> <p>3     sale?</p> <p>4     A.   As UEP?</p> <p>5     Q.   Through UEP.</p> <p>6     A.   No.</p> <p>7     Q.   You testified, though, at USEM</p> <p>8     you did do several -- you did participate in</p> <p>9     several export sales through USEM, is that</p> <p>10    correct, during that period?</p> <p>11    A.   During that period I think we</p> <p>12    participated in two. I think there were two</p> <p>13    sales.</p> <p>14    Q.   What was it about -- what were</p> <p>15    the circumstances the time you participated</p> <p>16    in those exports that you decided to do it?</p> <p>17       MR. BARNES: Object to the form.</p> <p>18       Asked and answered. He's already</p> <p>19       testified to this.</p> <p>20       THE WITNESS: Why we did?</p> <p>21    BY MR. MALYSIAK:</p> <p>22    Q.   Yes.</p> <p>23    A.   Well, we built a new facility</p> <p>24    in North Carolina, and it was producing</p> <p>25    surplus eggs because it was brand new, and</p>	<p style="text-align: right;">Page 349</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     regularly and buy eggs from other producers?</p> <p>3     A.   We have always either bought</p> <p>4     eggs from other producers or you bid on ECI</p> <p>5     for eggs or -- yeah, we did.</p> <p>6     Q.   What would your estimate be of</p> <p>7     the percentage you would sell of eggs that</p> <p>8     you had purchased rather than you produced?</p> <p>9     A.   Of what we bought?</p> <p>10    Q.   What you sold.</p> <p>11    A.   Of what we sold?</p> <p>12    Q.   Yes.</p> <p>13    A.   Were in that 90 -- we</p> <p>14    probably -- of what we sold probably 95 plus</p> <p>15    percent of it were ours.</p> <p>16    Q.   Your production?</p> <p>17    A.   Yes.</p> <p>18    Q.   Do you know of your personal</p> <p>19    knowledge whether that varies a lot in the</p> <p>20    industry?</p> <p>21    A.   I have no idea what other</p> <p>22    companies, what they own, don't own, have</p> <p>23    contracts for. I don't know the business.</p> <p>24    Q.   During that period from</p> <p>25    becoming a member in 2002 through the end of</p>

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<p style="text-align: right;">Page 350</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     2008, did the issue ever come up with you</p> <p>3     from anyone else that UEP might not be a</p> <p>4     valid Capper-Volstead cooperative?</p> <p>5     A.   Not till this suit was filed.</p> <p>6     Q.   Do you recall that the Wall</p> <p>7     Street Journal had an article in</p> <p>8     September 2008 about alleged supply reduction</p> <p>9     in the egg industry in the United States?</p> <p>10    A.   That was -- I think that might</p> <p>11    have been right after the animal rights folks</p> <p>12    had got the justice department to investigate</p> <p>13    the egg industry, they tried to say the</p> <p>14    Animal Welfare Program was a sham. You know,</p> <p>15    they were fighting us at the ballot box in</p> <p>16    California and then we was fighting them in</p> <p>17    the courts or in the political world.</p> <p>18    They're saying that we're doing this other</p> <p>19    stuff. Everything we tried to do, the animal</p> <p>20    rights groups have been in creating. We feel</p> <p>21    the animal rights got the -- you guys into</p> <p>22    the lawsuits.</p> <p>23    Q.   Did you know that the Wall</p> <p>24    Street Journal was investigating the egg</p> <p>25    industry for some time before the article</p>	<p style="text-align: right;">Page 352</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     understanding at the time, it was instigated</p> <p>3     by the animal rights groups. That's all we</p> <p>4     know.</p> <p>5     Q.   Did Rose Acre ever have to</p> <p>6     produce any information to the Justice</p> <p>7     Department in their investigation?</p> <p>8     A.   They could have. I'm not at</p> <p>9     the main office. I don't recollect whether</p> <p>10    they did or didn't.</p> <p>11    Q.   You don't know one way or the</p> <p>12    other?</p> <p>13    A.   No.</p> <p>14        MR. MALYSIAK: Mark this the</p> <p>15    next exhibit.</p> <p>16        - - -</p> <p>17        (Exhibit 50, Rose Acre Farms,</p> <p>18    Inc.'s Objections and Answers to the</p> <p>19    Direct Purchaser Plaintiffs' Second</p> <p>20    Set of Interrogatories to Defendants,</p> <p>21    was marked for identification.)</p> <p>22        - - -</p> <p>23    BY MR. MALYSIAK:</p> <p>24    Q.   Exhibit 50 is a document</p> <p>25    entitled Rose Acre Farms, Inc.'s -- "ROSE</p>
<p style="text-align: right;">Page 351</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     appeared?</p> <p>3     A.   I was not aware of that.</p> <p>4     Q.   Did you know that the Justice</p> <p>5     Department was investigating the egg industry</p> <p>6     before the article appeared?</p> <p>7     A.   We understood that --</p> <p>8        MS. ANDERSON: Object to the</p> <p>9     form of the question. Lacks</p> <p>10    foundation.</p> <p>11    BY MR. MALYSIAK:</p> <p>12    Q.   What was the basis of your</p> <p>13    knowledge for that?</p> <p>14    A.   I don't recall. Like I just</p> <p>15    went to a meeting, maybe we got paperwork, I</p> <p>16    don't remember. But my understanding, they</p> <p>17    done an investigation, found nothing wrong</p> <p>18    and then left.</p> <p>19    Q.   Was this a UEP meeting you're</p> <p>20    mentioning?</p> <p>21    A.   I don't recall what it was.</p> <p>22    There was a supposed Justice Department</p> <p>23    investigation. I could be wrong on that.</p> <p>24    That's what my recollection says that there</p> <p>25    was. And nothing come out of it that -- our</p>	<p style="text-align: right;">Page 353</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     ACRE FARMS, INC.'S OBJECTIONS AND ANSWERS TO</p> <p>3     THE DIRECT PURCHASER PLAINTIFFS' SECOND SET</p> <p>4     OF INTERROGATORIES TO DEFENDANTS." It's a</p> <p>5     six-page document with the caption for this</p> <p>6     antitrust case.</p> <p>7        Mr. Rust, do you recall whether</p> <p>8     you've ever seen this document before?</p> <p>9     A.   I don't recall that I have.</p> <p>10    Q.   Turning to page 3 in the</p> <p>11    middle -- let me start first by saying a</p> <p>12    portion of page 3 to which I'm referring is</p> <p>13    an answer to an Interrogatory Number 6 that</p> <p>14    says, this is Interrogatory to Rose Acre, "Do</p> <p>15    you contend that, at any time during the</p> <p>16    period of January 1, 1999 to December 31,</p> <p>17    2008, you relied on a good faith belief that</p> <p>18    conduct challenged in this case was exempt</p> <p>19    from the Sherman Act's prohibitions under the</p> <p>20    Capper-Volstead Act. If so, identify with</p> <p>21    full specificity the basis for such</p> <p>22    contention, including by setting forth all</p> <p>23    communications you received relating to the</p> <p>24    application of the Capper-Volstead Act to (i)</p> <p>25    UEP's conduct generally or (ii) any of the</p>

<p style="text-align: right;">Page 354</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     conduct challenged in this case."</p> <p>3             In the middle of page 3, Rose</p> <p>4     Acre's answer first is, the first sentence</p> <p>5     after its objections, Rose Acre states that</p> <p>6     it received numerous communications over the</p> <p>7     years including the UEP and USEM (and their</p> <p>8     members) -- indicating that UEP and USEM (and</p> <p>9     their members) were both Capper-Volstead</p> <p>10    protected agricultural cooperatives and that</p> <p>11    these same representations were also</p> <p>12    repeatedly made to and by others.</p> <p>13             Do you recall whether you saw</p> <p>14    this answer before it was submitted in the</p> <p>15    case?</p> <p>16    A.    I don't recall seeing this, no.</p> <p>17    Q.    In my previous questions you've</p> <p>18    related the conversations you had with Mr.</p> <p>19    Gregory at UEP and Mr. Seger at USEM about</p> <p>20    Capper-Volstead Act. Correct?</p> <p>21    A.    Correct.</p> <p>22    Q.    Are there any other</p> <p>23    communications or representations on that</p> <p>24    subject that you recall receiving during the</p> <p>25    period from 2002 through the end of 2008?</p>	<p style="text-align: right;">Page 356</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     maybe when that Justice Department</p> <p>3     investigation was going on. And I</p> <p>4     don't recall the dates of that. It</p> <p>5     may not have been Justice. Something</p> <p>6     that the animal rights group</p> <p>7     instigated. I don't remember what it</p> <p>8     was.</p> <p>9             MR. MALYSIAK: I'd like to</p> <p>10    confer for a moment with my colleagues.</p> <p>11    THE WITNESS: Sure.</p> <p>12    - - -</p> <p>13    (A discussion off the record</p> <p>14    occurred.)</p> <p>15    - - -</p> <p>16    VIDEOGRAPHER: Off the record.</p> <p>17    MR. BARNES: Wait a minute.</p> <p>18    MR. MALYSIAK: We're ready to go</p> <p>19    on.</p> <p>20    MR. BARNES: Right back on. I'm</p> <p>21    sorry, I thought you needed more time.</p> <p>22    I'm sorry.</p> <p>23    MR. MALYSIAK: That's all the</p> <p>24    questions I have.</p> <p>25    - - -</p>
<p style="text-align: right;">Page 355</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     A.    Well, when they would come --</p> <p>3             MS. REDDING: This is Whitney</p> <p>4     Redding. I object to the extent that</p> <p>5     question calls for privileged advice</p> <p>6     protected by UEP's privilege.</p> <p>7             MR. MALYSIAK: At this point I'm</p> <p>8     just asking whether he received any</p> <p>9     communications, not the subject</p> <p>10    matter, not the content of it.</p> <p>11    THE WITNESS: I remember</p> <p>12    receiving written stuff from UEP. But</p> <p>13    I've always -- I'm not a paper</p> <p>14    collector. And once you look at it,</p> <p>15    you toss it. That's, you know,</p> <p>16    printed the stuff that they print off,</p> <p>17    I have no reason to keep or file.</p> <p>18    BY MR. MALYSIAK:</p> <p>19    Q.    Did the question ever come up</p> <p>20    to you personally during the period 2002 to</p> <p>21    the end of 2008 that UEP and its members</p> <p>22    might be violating the antitrust laws?</p> <p>23    MR. BARNES: Object to the form.</p> <p>24    THE WITNESS: Only whenever the</p> <p>25    suit was filed, an hour before that</p>	<p style="text-align: right;">Page 357</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2             EXAMINATION</p> <p>3     - - -</p> <p>4    BY MR. BARNES:</p> <p>5    Q.    Mr. Rust, I've got a few</p> <p>6    questions to clean up certain things in the</p> <p>7    record. You want me to go faster, I get it.</p> <p>8    I get it.</p> <p>9    A.    I can tell you to speed up.</p> <p>10   Q.    You can. You're my boss, you</p> <p>11   can tell me to do anything.</p> <p>12   MR. MONICA: Take your phone</p> <p>13   out, Marcus. Sorry.</p> <p>14   BY MR. BARNES:</p> <p>15   Q.    What is ECI? You referred to</p> <p>16   ECI.</p> <p>17   A.    Egg Clearinghouse.</p> <p>18   Q.    What is it?</p> <p>19   A.    That was an organization</p> <p>20   started by UEP multiple years ago. It's an</p> <p>21   electronic clearinghouse for the egg</p> <p>22   production industry for people to buy and</p> <p>23   sell off of. It's kind of a surplus</p> <p>24   clearinghouse.</p> <p>25   Q.    Who runs it?</p>

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<p style="text-align: right;">Page 358</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     A.   It's an independent group of</p> <p>3   people that was originally set up by UEP.</p> <p>4   And it's a self functioning thing now.</p> <p>5     Q.   You had testified previously</p> <p>6   about the co-op you and a few other egg</p> <p>7   producers were going to set up called</p> <p>8   certified egg producers. Do you remember</p> <p>9   generally that testimony?</p> <p>10   A.   Yes.</p> <p>11   Q.   I believe in response to a</p> <p>12   question from Mr. Schirmer, you said, and</p> <p>13   this may not be an exact quote, that you</p> <p>14   couldn't -- you shut down the co-op, this</p> <p>15   brand new co-op because you couldn't make</p> <p>16   enough money to pay the lawyers.</p> <p>17   A.   Correct.</p> <p>18   Q.   Correct? What did you mean by</p> <p>19   that statement?</p> <p>20   A.   Well, because all the suits</p> <p>21   that had just been filed in the shell egg</p> <p>22   industry, we knew that we couldn't afford our</p> <p>23   -- a set of lawyers like you guys to defend</p> <p>24   us in something that we had never ever sold a</p> <p>25   pound from yet. It was just cheaper to</p>	<p style="text-align: right;">Page 360</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2   because how efficient Michaels was. We</p> <p>3   wanted to be a viable competitor to them, and</p> <p>4   we had to pay a bunch of attorneys because we</p> <p>5   was producers together, that took out any</p> <p>6   effective competition that we had.</p> <p>7     Q.   I'm going to direct your</p> <p>8   attention back to Exhibit 41, Mr. Rust. This</p> <p>9   is the two-page set of Shell Egg Price</p> <p>10   Discovery Committee meeting minutes,</p> <p>11   UE0153063 is the first page, December 7,</p> <p>12   2005. Do you have that document in front of</p> <p>13   you?</p> <p>14   A.   Yes.</p> <p>15   Q.   If you look at the second</p> <p>16   paragraph on the bottom of the page, it says,</p> <p>17   "USDA."</p> <p>18   A.   Yes.</p> <p>19   Q.   And it identifies a Michael</p> <p>20   Sheats and a Mary Atkins from USDA Poultry</p> <p>21   Market News. Do you recall them being at the</p> <p>22   meeting?</p> <p>23   A.   They were at about all UEP</p> <p>24   meetings.</p> <p>25   Q.   Who was at about all UEP</p>
<p style="text-align: right;">Page 359</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2   dissolve it than start it, you know, to go --</p> <p>3   because it just wasn't -- you know, because,</p> <p>4   you know, it seems like everybody was getting</p> <p>5   named and sued for everything. So, you know,</p> <p>6   we decided enough of that.</p> <p>7     Q.   Did your decision to not</p> <p>8   proceed to implement the certified egg</p> <p>9   products company and to compete with, I</p> <p>10   believe you said you were going to compete</p> <p>11   with companies like Michaels and others. Is</p> <p>12   that correct?</p> <p>13   A.   Correct.</p> <p>14   Q.   So your decision to shut down</p> <p>15   the company before it engaged in any</p> <p>16   competition in the industry had to do with</p> <p>17   the fear of lawsuits by whom?</p> <p>18   A.   By these class action</p> <p>19   attorneys.</p> <p>20   Q.   Like the gentlemen sitting at</p> <p>21   the table?</p> <p>22   A.   Like the people sitting here.</p> <p>23   I mean, it was just -- you know, it wasn't</p> <p>24   worth getting into a new business because it</p> <p>25   was going to be tough to make money in it</p>	<p style="text-align: right;">Page 361</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2   meetings?</p> <p>3     A.   Always -- there was always</p> <p>4   people from the United States Department of</p> <p>5   Agriculture, agg marketing groups at the</p> <p>6   meeting. Sometimes half a dozen.</p> <p>7     Q.   By the way, in talking about</p> <p>8   egg products, you talked about egg products</p> <p>9   earlier, did Rose Acre ever sell precooked</p> <p>10   egg products?</p> <p>11   A.   No.</p> <p>12   Q.   Hard cooked eggs?</p> <p>13   A.   No.</p> <p>14   Q.   Pasteurized shell eggs?</p> <p>15   A.   No.</p> <p>16   Q.   Did you ever sell any enzyme</p> <p>17   modified egg products prior to 2008 or 2009?</p> <p>18   A.   No. Wait, I might be wrong</p> <p>19   there. I might be wrong. We produced a</p> <p>20   specialty product for Kraft. And it's a --</p> <p>21   we're the only producer of it. It's some</p> <p>22   kind of a secret process.</p> <p>23   Q.   So you can't disclose it?</p> <p>24   A.   I can't disclose how it's done.</p> <p>25   What -- it may be enzyme, it may have what</p>

<p style="text-align: right;">Page 362</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     you called in that, I don't know.</p> <p>3     Q.   Do you know one way or the</p> <p>4     other?</p> <p>5     A.   I have no idea.</p> <p>6     Q.   Thank you.</p> <p>7           I'm going to direct your</p> <p>8     attention back to Exhibit 10. These were the</p> <p>9     UEP Marketing Committee meeting minutes,</p> <p>10    January 23, 2006.</p> <p>11    A.   10?</p> <p>12    Q.   Yes, Exhibit 10. You got 10</p> <p>13    there, Marcus?</p> <p>14    A.   Yes.</p> <p>15    Q.   Do you recall Mr. Schirmer read</p> <p>16    various sections of this document to you?</p> <p>17    A.   Yes.</p> <p>18    Q.   I'm going to direct your</p> <p>19    attention to the second page of Exhibit 10.</p> <p>20    These are the Marketing Committee -- UEP</p> <p>21    Marketing Committee meeting minutes of</p> <p>22    Atlanta, Georgia, January 23, 2006. And the</p> <p>23    top paragraph of the second page, it</p> <p>24    summarizes a report by Gene Gregory, and</p> <p>25    Mr. Schirmer directing your attention to the</p>	<p style="text-align: right;">Page 364</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     Q.   Yes, that one.</p> <p>3     A.   Okay.</p> <p>4     Q.   Do you recall that at this</p> <p>5     period of time -- do you recall this report</p> <p>6     by Mr. Gregory that the industry increased</p> <p>7     the layer flock inventory by 9.3 million hens</p> <p>8     in the last six months of 2005?</p> <p>9     A.   Vaguely from looking at it,</p> <p>10    yes.</p> <p>11    Q.   Exhibit 16.</p> <p>12    A.   Okay.</p> <p>13    Q.   Directing your attention, Mr.</p> <p>14    Rust, to what has been previously marked as</p> <p>15    Exhibit 16, this is a document bearing</p> <p>16    identification number RAUPDATE0043641. Do</p> <p>17    you have it in front of you?</p> <p>18    A.   Yes.</p> <p>19    Q.   This is a Gene Gregory e-mail</p> <p>20    dated December 21, 2007, to numerous people.</p> <p>21    Do you see the name in the -- I think it's</p> <p>22    the eighth line from the top, the addressees,</p> <p>23    there's a -- the identity of a person called</p> <p>24    Kevin Haley? Do you see that?</p> <p>25    A.   Yes.</p>
<p style="text-align: right;">Page 363</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     paragraph that said, "Managing Supply -</p> <p>3     Demand." Do you see that? Top paragraph.</p> <p>4     A.   Top paragraph.</p> <p>5     Q.   "Managing Supply - Demand."</p> <p>6     A.   Yes.</p> <p>7     Q.   Would you read the last</p> <p>8     sentence of that paragraph, please? "He also</p> <p>9     reported..." Last page, top paragraph,</p> <p>10    "Managing Supply - Demand: Gene Gregory</p> <p>11    presented statistical reports..."</p> <p>12           Did you find the paragraph?</p> <p>13    A.   I think I'm there.</p> <p>14    Q.   Be sure. You need your</p> <p>15    glasses?</p> <p>16    A.   It says, he also -- I put them</p> <p>17    in my pocket.</p> <p>18    Q.   Okay.</p> <p>19    A.   "He also reported that the</p> <p>20    industry increased the layer flock..."</p> <p>21    Q.   Yes, please read that.</p> <p>22    A.   "...inventory by 9.3 million</p> <p>23    hens in the last six months of 2005 and that</p> <p>24    the cull rate during those six months was the</p> <p>25    lowest on record." That one?</p>	<p style="text-align: right;">Page 365</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     Q.   Who is Kevin Haley?</p> <p>3     A.   He was with Country Creek</p> <p>4     Farms.</p> <p>5     Q.   Not Whaley, Haley.</p> <p>6     A.   Haley. That's Brann &amp;</p> <p>7     Isaacson.</p> <p>8     Q.   And what was Brann &amp; Isaacson</p> <p>9     at this period of time?</p> <p>10    A.   They were the UEP</p> <p>11    Capper-Volstead attorneys.</p> <p>12    Q.   How often did attorneys from</p> <p>13    UEP's law firm, Brann &amp; Isaacson, attend</p> <p>14    meetings that you attended?</p> <p>15    A.   I don't recall a meeting that</p> <p>16    they were not at.</p> <p>17    Q.   Give me one second as I rummage</p> <p>18    through. I am going to mark an exhibit,</p> <p>19    since everybody else has been, I want to mark</p> <p>20    an exhibit at this deposition as well. I'm</p> <p>21    going to do that right now, Mr. Rust.</p> <p>22           MR. BARNES: I'm going to ask</p> <p>23    the reporter to mark as Exhibit 51</p> <p>24    a -- how many page document do you</p> <p>25    have here? You can pass those out.</p>



<p style="text-align: right;">Page 366</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     It's a two-page document captioned on</p> <p>3     the front page, "A Membership</p> <p>4     Opportunity Presented By UEP and</p> <p>5     Midwest UEP To ROSE ACRE FARMS."</p> <p>6     - - -</p> <p>7     (Exhibit 51, A Membership</p> <p>8     Opportunity Presented By UEP and</p> <p>9     Midwest UEP To ROSE ACRE FARMS, Bates</p> <p>10    UE0186974 &amp; UE0186975, was marked for</p> <p>11    identification.)</p> <p>12    - - -</p> <p>13  BY MR. BARNES:</p> <p>14    Q.   I'm going to show you what has</p> <p>15    been marked as Exhibit 51 which is the</p> <p>16    membership opportunity presented to you by</p> <p>17    UEP and ask if you can identify that</p> <p>18    document?</p> <p>19    A.   It's one of the numerous</p> <p>20    different packages that they tried to give us</p> <p>21    when they were trying to get us to join.</p> <p>22    Q.   Do you recall how many years it</p> <p>23    took UEP to convince Rose Acre to finally</p> <p>24    join?</p> <p>25    A.   10 or 20.</p>	<p style="text-align: right;">Page 368</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     your earlier testimony.</p> <p>3     A.   Correct.</p> <p>4     Q.   Do you recall Gene Gregory</p> <p>5     mentioning one or more of these various</p> <p>6     accomplishments when he attempted to solicit</p> <p>7     your membership over many, many years?</p> <p>8     A.   Gene was a salesman. He has</p> <p>9     always -- some people called him rubber lips.</p> <p>10    MR. BARNES: One second, let me</p> <p>11    converse. Let me talk to my --</p> <p>12    MR. MONICA: Go off for one</p> <p>13    second.</p> <p>14    VIDEOGRAPHER: Off the record at</p> <p>15    3:27.</p> <p>16    - - -</p> <p>17    (A recess was taken.)</p> <p>18    - - -</p> <p>19    VIDEOGRAPHER: Back on the</p> <p>20    record at 3:28.</p> <p>21    - - -</p> <p>22    (Exhibit 52, UEP Membership</p> <p>23    Agreement, Bates UE0148105, was marked</p> <p>24    for identification.)</p> <p>25    - - -</p>
<p style="text-align: right;">Page 367</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     Q.   Directing your attention to the</p> <p>3     second page of the document, Mr. Rust, this</p> <p>4     is a membership opportunity they presented to</p> <p>5     you. At the very top of that page, it says,</p> <p>6     "UEP'S VALUE TO ROSE ACRE FARMS." Do you see</p> <p>7     that? The second page at the very top.</p> <p>8     A.   Yes.</p> <p>9     Q.   What does the first line of the</p> <p>10    second page of that document say? What is --</p> <p>11    A.   United Egg Producers is a</p> <p>12    federated Capper-Volstead Agricultural co-op</p> <p>13    of five regional marketing cooperatives.</p> <p>14    Q.   And then down in the middle of</p> <p>15    the page on that document, actually toward</p> <p>16    the bottom of the page, there are a number of</p> <p>17    bullet points. Do you see those?</p> <p>18    A.   Yes.</p> <p>19    Q.   And before those bullet points,</p> <p>20    the document states, "Because UEP's voice has</p> <p>21    been heard, many major accomplishments have</p> <p>22    occurred over the last 25 years." And then</p> <p>23    it proceeds to list a number of those</p> <p>24    accomplishments. And one of -- the second</p> <p>25    one is the Egg Clearinghouse you mentioned in</p>	<p style="text-align: right;">Page 369</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2  BY MR. BARNES:</p> <p>3     Q.   Mr. Rust, the reporter has just</p> <p>4     handed you a document which has been marked</p> <p>5     Exhibit 52. It's captioned at the top,</p> <p>6     "UNITED EGG PRODUCERS MEMBERSHIP AGREEMENT."</p> <p>7     Can you identify this document for the</p> <p>8     record, please?</p> <p>9     A.   This is a document I signed to</p> <p>10    join the United Egg Producers.</p> <p>11    Q.   And what is the date of the</p> <p>12    document?</p> <p>13    A.   The document is dated 2/11/02.</p> <p>14    Q.   Now, would you look at -- this</p> <p>15    document may be hard to read because it looks</p> <p>16    like the type is blurred, but under</p> <p>17    membership dues -- pardon me, strike that.</p> <p>18        Under the second paragraph from</p> <p>19    the top, that paragraph begins, "Membership</p> <p>20    is available to any person, firm or</p> <p>21    partnership...engaged in the production of</p> <p>22    table eggs, breeder flocks, starter</p> <p>23    pullets..., " et cetera.</p> <p>24        Do you see that paragraph?</p> <p>25    A.   Yes.</p>



<p style="text-align: right;">Page 370</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2     Q.    Could you make out the last</p> <p>3 sentence of that document?</p> <p>4     A.    It says membership is also</p> <p>5 available to any cooperative -- I think it</p> <p>6 says cooperative or engaged to fit any of the</p> <p>7 above enterprises -- I'm not sure. And to</p> <p>8 qualify as Capper-Volstead producers.</p> <p>9           MR. BARNES: I'm going to mark</p> <p>10 one more document. And now we'll</p> <p>11 probably not mark anymore.</p> <p>12 Exhibit 53.</p> <p>13         - - -</p> <p>14           (Exhibit 53, UEP Capper-Volstead</p> <p>15 Certification, Bates UE0148106, was</p> <p>16 marked for identification.)</p> <p>17         - - -</p> <p>18 BY MR. BARNES:</p> <p>19     Q.    Exhibit 53 is a one-page</p> <p>20 document captioned, "United Egg Producers</p> <p>21 CAPPER-VOLSTEAD CERTIFICATION," bearing</p> <p>22 certification number UE0148106. I'll ask you</p> <p>23 to take a look at that document, Mr. Rust,</p> <p>24 and tell me if you can identify it?</p> <p>25     A.    It's a Capper-Volstead</p>	<p style="text-align: right;">Page 372</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2         - - -</p> <p>3           FURTHER EXAMINATION</p> <p>4         - - -</p> <p>5 BY MR. MALYSIAK:</p> <p>6     Q.    I just have some follow up on</p> <p>7 these new exhibits.</p> <p>8           Mr. Rust, Exhibit 51, the Rose</p> <p>9 Acre Farms -- "A Membership Opportunity</p> <p>10 Presented By UEP and MIDWEST UEP To ROSE ACRE</p> <p>11 FARMS," I don't see a date on it. Do you</p> <p>12 know when this -- when you were given this?</p> <p>13     A.    Sometime. They created -- they</p> <p>14 put lots of stuff in, you know, trying to get</p> <p>15 us to join. And we just -- you know, we had</p> <p>16 an issue.</p> <p>17     Q.    The second paragraph on page 2</p> <p>18 says, "Our...," and this is UEP saying, "Our</p> <p>19 objective is to serve the membership in the</p> <p>20 area of government relations, marketing,</p> <p>21 member service programs and communications."</p> <p>22           Do you recall Mr. Gregory</p> <p>23 saying to you what services would be -- could</p> <p>24 be offered for marketing to Rose Acre?</p> <p>25     A.    They just talked about how they</p>
<p style="text-align: right;">Page 371</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2 certification.</p> <p>3     Q.    Who signed it?</p> <p>4     A.    I did.</p> <p>5     Q.    What was -- what is the date of</p> <p>6 this document?</p> <p>7     A.    12/10/03.</p> <p>8     Q.    So this is more than a year</p> <p>9 after you joined UEP. Is that correct?</p> <p>10     A.    Yes.</p> <p>11     Q.    Now, in response to questions</p> <p>12 by Mr. Malysiak, you had trouble recalling</p> <p>13 various Capper-Volstead discussions or</p> <p>14 documents you had received from UEP.</p> <p>15     A.    Correct.</p> <p>16     Q.    Does this document and your</p> <p>17 membership agreement and Exhibit 50, the</p> <p>18 membership opportunity document, does that</p> <p>19 refresh your recollection somewhat as to the</p> <p>20 types of communications you received from UEP</p> <p>21 regarding Capper-Volstead?</p> <p>22     A.    Somewhat, yes.</p> <p>23           MR. BARNES: Thank you, Mr.</p> <p>24 Rust. I have no further questions at</p> <p>25 this time.</p>	<p style="text-align: right;">Page 373</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2 gave suggested different -- you know, they</p> <p>3 would study different -- you know, they took</p> <p>4 a lot of USDA numbers and would give</p> <p>5 projections off of those to their members to</p> <p>6 do voluntary things. That was one of the</p> <p>7 things they always promoted.</p> <p>8     Q.    So did he talk to you, then,</p> <p>9 about possible efforts to reduce the supply</p> <p>10 of eggs if prices were low?</p> <p>11     A.    Never to say that. What they</p> <p>12 talked about always was how each -- it would</p> <p>13 affect each producer because there was always</p> <p>14 different producers that for some reasons</p> <p>15 they would molt or not molt.</p> <p>16     Q.    Mr. Gregory's point was that if</p> <p>17 you joined the membership, the membership</p> <p>18 could be more effective in that respect than</p> <p>19 on your own?</p> <p>20     A.    They would provide information --</p> <p>21 MR. BARNES: Object to the form.</p> <p>22           THE WITNESS: They would provide</p> <p>23 information that may be of benefit for</p> <p>24 people to make the proper decisions</p> <p>25 that they needed for their business.</p>

<p style="text-align: right;">Page 374</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2 BY MR. MALYSIAK:</p> <p>3     Q.   The first bullet point further</p> <p>4 down that page says, "Offered voluntarily</p> <p>5 supply/demand and price discovery programs."</p> <p>6 Do you recall Mr. Gregory saying anything</p> <p>7 specific about that?</p> <p>8     A.   Not specifically. Talked about</p> <p>9 it, but, you know, the specifics about it, I</p> <p>10 don't remember the detail.</p> <p>11    Q.   He put that number one, though,</p> <p>12 in his list, didn't he?</p> <p>13    A.   Yes.</p> <p>14    Q.   Did he particularly emphasize</p> <p>15 that?</p> <p>16    A.   They always emphasize that.</p> <p>17 They had -- they had been -- you know, what</p> <p>18 they -- UEP has been around for 25 years</p> <p>19 doing the same thing.</p> <p>20    Q.   Do any of these three</p> <p>21 documents, 51, 52 and 53, refresh your</p> <p>22 recollection as to whether you asked Mr.</p> <p>23 Gregory for any proof of the fact that UEP</p> <p>24 was a valid Capper-Volstead cooperative?</p> <p>25       MR. BARNES: Object to the form.</p>	<p style="text-align: right;">Page 376</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2         - - -</p> <p>3         (Witness excused.)</p> <p>4         - - -</p> <p>5         (Deposition concluded at 3:35</p> <p>6         p.m.)</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 375</p> <p>1     MARCUS RUST - HIGHLY CONFIDENTIAL</p> <p>2       THE WITNESS: I had no reason to</p> <p>3 doubt that they was or wasn't. You</p> <p>4 know, I just never had anything that</p> <p>5 said they weren't.</p> <p>6 BY MR. MALYSIAK:</p> <p>7     Q.   So you didn't ask for any proof</p> <p>8 that they were?</p> <p>9       MR. BARNES: Same objection.</p> <p>10    THE WITNESS: No proof, no.</p> <p>11    MR. BARNES: Mr. Rust, thank you</p> <p>12 very much.</p> <p>13    THE WITNESS: I'm done.</p> <p>14 Deposition is over.</p> <p>15    VIDEOGRAPHER: This is the end</p> <p>16 of tape four of the videotape</p> <p>17 deposition. The deposition ended at</p> <p>18 3:35.</p> <p>19    MR. BARNES: We're not going to</p> <p>20 waive reading and signing. We're not</p> <p>21 going to waive that. We're not going</p> <p>22 to waive reading and signing, and</p> <p>23 we're going to designate the</p> <p>24 deposition highly confidential</p> <p>25 pursuant to our protective order.</p>	<p style="text-align: right;">Page 377</p> <p>1       C E R T I F I C A T E</p> <p>2</p> <p>3</p> <p>4</p> <p>5       I do hereby certify that I am a Notary</p> <p>6 Public in good standing, that the aforesaid</p> <p>7 testimony was taken before me, pursuant to</p> <p>8 notice, at the time and place indicated; that</p> <p>9 said deponent was by me duly sworn to tell</p> <p>10 the truth, the whole truth, and nothing but</p> <p>11 the truth; that the testimony of said</p> <p>12 deponent was correctly recorded in machine</p> <p>13 shorthand by me and thereafter transcribed</p> <p>14 under my supervision with computer-aided</p> <p>15 transcription; that the deposition is a true</p> <p>16 and correct record of the testimony given by</p> <p>17 the witness; and that I am neither of counsel</p> <p>18 nor kin to any party in said action, nor</p> <p>19 interested in the outcome thereof.</p> <p>20</p> <p>21       WITNESS my hand and official seal this</p> <p>22 19th day of March, 2014.</p> <p>23</p> <p>24</p> <p>25</p> <p>_____</p> <p>Notary Public</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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<div style="text-align: right;">Page 378</div> <p>1</p> <p>2       <b>INSTRUCTIONS TO WITNESS</b></p> <p>3</p> <p>4       Please read your deposition over</p> <p>5 carefully and make any necessary corrections.</p> <p>6 You should state the reason in the</p> <p>7 appropriate space on the errata sheet for any</p> <p>8 corrections that are made.</p> <p>9       After doing so, please sign the errata</p> <p>10 sheet and date it.</p> <p>11       You are signing same subject to the</p> <p>12 changes you have noted on the errata sheet,</p> <p>13 which will be attached to your deposition.</p> <p>14       It is imperative that you return the</p> <p>15 original errata sheet to the deposing</p> <p>16 attorney within thirty (30) days of receipt</p> <p>17 of the deposition transcript by you. If you</p> <p>18 fail to do so, the deposition transcript may</p> <p>19 be deemed to be accurate and may be used in</p> <p>20 court.</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<div style="text-align: right;">Page 380</div> <p>1               <b>ERRATA SHEET</b></p> <p>2   IN RE: PROCESSED EGG PRODUCTS ANTITRUST LITIGATION</p> <p>3   DATE: 3/7/14</p> <p>4   PAGE    LINE           CORRECTION AND REASON</p> <p>5   _____</p> <p>6   _____</p> <p>7   _____</p> <p>8   _____</p> <p>9   _____</p> <p>10   _____</p> <p>11   _____</p> <p>12   _____</p> <p>13   _____</p> <p>14   _____</p> <p>15   _____</p> <p>16   _____</p> <p>17   _____</p> <p>18   _____</p> <p>19   _____</p> <p>20   _____</p> <p>21   _____</p> <p>22   _____</p> <p>23</p> <p>24   _____</p> <p>25   (DATE)                   MARCUS RUST</p>
<div style="text-align: right;">Page 379</div> <p>1</p> <p>2       <b>ACKNOWLEDGMENT OF DEPONENT</b></p> <p>3       I have read the foregoing transcript of</p> <p>4 my deposition and except for any corrections or</p> <p>5 changes noted on the errata sheet, I hereby</p> <p>6 subscribe to the transcript as an accurate record</p> <p>7 of the statements made by me.</p> <p>8</p> <p>9       _____</p> <p>10               MARCUS RUST</p> <p>11</p> <p>12       SUBSCRIBED AND SWORN before and to me</p> <p>13 this ____ day of _____, 20____.</p> <p>14</p> <p>15</p> <p>16       _____</p> <p>17               NOTARY PUBLIC</p> <p>18</p> <p>19</p> <p>20   My Commission expires:</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	

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